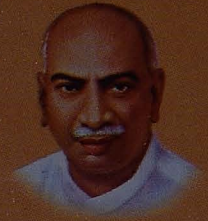




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**CRIMINOLOGY & POLICE ADMINISTRATION**

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Dear Students ,

Warm Greetings to you from the Faculty of Criminology and Police Administration of the Directorate of Distance Education of Madurai Kamaraj University.

You have enrolled yourself into an unique course, namely, M.A. Degree in Criminology and Police Administration.

This subject in particular Human Rights and Victimology has been prepared with utmost care by not only referring to printed sources but more by collecting necessary information from the officials of the Tamil nadu Police Department and website was also accessed for more information and Law Journals.

With tremendous advances in the sphere of Research and Development, all over the world has so much advanced that it has now come to be called Victimology a Science.

Knowledge of researchers and experts is pouring into the field of Human Rights and Victimology so much that every activity, every branch, every section of the people is greatly benefited.

However, students are advised to observe and use the details wherever necessary in the examination. You may also provide real examples known to you in the context of the answers you write in the examination on this subject. Additional information are invited gladly from serving personals and practising civil and criminal lawyers and professionals from other allied fields of activities.

**“All the Best”.**

Faculty of Criminology  
and Police Administration



**II YEAR M.A. IN CRIMINOLOGY AND POLICE ADMINISTRATION  
COMMON TO P.G. DIPLOMA IN CRIMINOLOGY**

**SUBJECT : HUMAN RIGHTS AND VICTIMOLOGY**

**SYLLABUS**

**Objectives**

The students will be helped

1. To understand the impact of crime on the victims and the societal response to victimization.
2. To learn the various ways of assisting the victims at different levels, and
3. To learn how to protect and promote the rights of victims.

**Unit I Foundations and Basic Concepts of Victimology**

**Lesson 1** Victimology: Definition and Scope, Historical Development, Types: Positivist, Radical and Critical Role and Functions of Victimologists.

**Lesson 2** Who is a Victim? Demographic Characteristics; Victims of Violent Crimes, Typologies of Victims, The Victim in History.

U.N. Declaration on Justice for Victims of Crimes and Abuse of power (1985), Handbook on Justice for Victims and the Guide for Policy Makers (1998).

## **Unit II     Patterns of Crime Victimization**

**Lesson 3**    Victims of Traditional Crimes -Focus on Women and Child Victim: Dowry, Domestic Violence, Sexual Assault, Sex Tourism, Child Abuse, Child Trafficking and Child Labour.

- Caste Atrocities. Communal Riots and Genocide.

**Lesson 4**    Abuse of Power: Organized Victimization -Definition, Examples and Perspectives: Functionists, conflict and Social Psychological.

## **Unit III   - Impact of Victimization and Victim Assistance Programme**

**Lesson 5**    Crime Victimization Survey: Concept Clarification, International Crime Victim Surveys (ICVS), Critical Assessment.

**Lesson 6**    The Physical and Financial Impact; Psychological Injury and social Cost Secondary Victimization.

## **Unit IV    Roles and Responsibilities of Professionals to Victims.**

**Lesson 7**    Victim Assistance Programme: Goal and Objectives, Types of Victim Services: Services from the police, the court, and the community;

- Stages in Assisting the Victims: Initial Victimization, Recognizing the Victim, Court Process, Post-Sentencing.
- Core Components of Victim Services: Victim Compensation and Restitution; Restorative Justice; Victim Assistance in Germany.

**Lesson 8**   - Criminal Justice Professionals and Victims; Police, Prosecution, Judiciary, Correctional, Probation and Parole Officers.

- Other Professionals: Medical, Mental Health and Child Protection Services.
- Role and Responsibilities of World Society of Victimology (WSV), Indian Society of Victimology (ISV), National Organisation for Victim Assistance (NOVA) Amnesty International (AI).



## **UNIT V   Victimology and Human Rights**

**Lesson 9   Human Rights: Definition, Historical Development, U.N.Universal Declaration of Human Rights;**

**Constitution of India -Fundamental Rights, Salient Features in The Code of Criminal Procedure, The Indian Evidence Act, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act, 1)**

**Lesson 10    The Rights of Children in India: Law, Policy and Practice a Critical Assessment.**

### **Reference Books**

**Aloysius Irudayam and Jayashree P. Mangubhai (2004) Adivasis Speak Out, Books for change, Bangalore.**

**Bajpai, Asha (2004) Child Rights in India, Oxford University Press.**

**Human Rights Watch (1999) Broken People, New York.**

**National Campaign on Dalit Human Rights (2000) Dalit Human Rights Violation Vol. 1 Chennai.**

**Rajan, V.N. Victimology in India (1995).**

# **HUMAN RIGHTS AND VICTIMOLOGY**

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# **UNIT I**

## **FOUNDATION AND BASIC CONCEPTS OF VICTIMOLOGY**

### **LESSON 1 - VICTIMOLOGY**

#### **INTRODUCTION**

Criminal law in its earlier stages was largely dominated by the idea of retribution. We can say victims satisfaction. Eye for an Eye; Tooth for a Tooth. This was the Philosophy followed in those day. If a man committed Patricide (killing of his own father). His brothers and Sisters wife will be victims. So the murderer was put into a box alive. Then one Cobra, one dog and one Cat were put in the box. The box was nailed and thrown in a river we can imagine - the physical and mental agony the Murderer would have undergone.

To day man had improved much. He is not in need of such Victim Compensation.

The concept of victim dates back to ancient cultures and civilisation. Its original meaning was rooted in the exercise of sacrifice - taking of the life of the person. Now the word victim have additional meanings - to include any person who experience injury, loss due to any cause.

#### **UNIT OBJECTIVE**

To know the development of the science called Victimology - in Criminal law - in Law of Criminal Procedure, - in the law of contracts - in the law of Torts, in the law of consumer protection - and in all walks of social life. Victimology has grown out of criminology. But it has developed as a separate branch of Science.



## UNIT STRUCTURE

Introduction

Unit Objective

Unit Structure

### 1.1. Definition

a. Penal Victimology

b. General Victimology

c. Symposium of Victimology

d. Victimology - in the past

### 1.2. Recent Micro - Victimology to Macro - Victimology

a. Development to Macro - Victimology

b. Theoretical Victimology to Applied Victimology

c. Victimology to day

d. Theory Formulation

e. Theoretical Models

f. Garofalo's Contribution

### 1.3. New Legislation

a. Victim compensation

b. Offender Restitution

c. Victim offender Mediation.

d. Victim services

### 1.4. The Future of Victimology

a. Towards a Realistic Approach

b. Realism

- c. A declining need for advocacy Partnership.
  - d. The demise of therapy
  - e. The Future of the restorative Justice.
  - f. Positive Victimology
  - g. Radical Victimology
  - h. Critical Victimology
  - i. Applied Victimology
- 1.5. Theories in Victimology
    - a. Psychopathology Theory
    - b. Feminist Theory
    - c. Learning Theory
  - 1.6. Summary
  - 1.7. Keywords
  - 1.8. Answer to Check your Progress.
  - 1.9. Model Questions.

## **1.1. DEFINITION**

Victimology is the independent study of the relationship and interactions between offender and victim before, during and after the crime. Victim is as one of the participants in the crime. Victims were classified according to the nature of their involvement in the criminal act. In addition to victim precipitation in the events resulting in the criminal act, the obligation of the offender to make good by compensating his victim is now also seen as part of the subject matter. Key notion is "Victim precipitation" as natural, non - legal concept which can help to explain the occurrence of criminal act.

Victimology in its most simple form is the study of the victim or victims of a particular offender. It is defined as the "thorough study and analy-

sis of victim characteristics”, and may also be called ‘Victim profiling investigation process because it not only tells personal history, social habits and personality, but also provides ideas as to why they were chosen as victims.

The reason a good victimology is important is that the victim constitutes roughly half of the criminal offence, and as such, is much a part of the crime as the crime scene, weapons and eye witness. Victimology is important in the overall investigative process because it not only tells who the victims were, their health and personal history, social habits and personality, but also provides ideas as to why they were chosen as victims. This is especially true when we are presented with a live victim, as this was the last person to witness the crime, and may be able to provide the best behavioural and physical description of the offender.

#### **a. Penal Victimology**

Penal victimology looks at the dynamic interplay between victim and offender. Criminal justice system should aim to satisfy the offender’s need for atonement the-victims need for retribution and their joint need for reconciliation. For the adherents of penal victimology the scope of the field is defined by the criminal law: victimology studies the victims of incidents defined as criminal by law. The research agenda of this victimological stream combines issues concerning the causation of crimes and those concerning the victims role in the criminal proceedings.

In relation to violence women, the issue if victim precipitations is particular sensitive. The notion that victims by their provoking behaviour triggered their victimization by male victimizers and in fact deserved to be victimized is part of the patriarchal mindset which is at the root of many such crimes. By focusing on the victim’s involvement attention is diverted from the structural causes of violence against women. Researchers who study the role played the victim in the dynamics resulting in the crime as well as in the ensuing legal conflict will typically hold discriminate opinion on the punishment of the offender. In the some cases the victim might indeed have to share part of the blame.

In other cases the victim has an interest in being reconciled with the offender. In penal victimology there is an intrinsic interest in non-punitive solution to criminal incidents (such as mediation) which, at least in theory, empower both victims and offenders. For the pioneers in victimology, offender and victims are equally deserving of humanitarian concerns. Since concern for the offenders does not conflict with concern for the victim there is every reason to preserve this tradition. This even-handedness is perhaps less justified, with regard to crimes committed in the context of structural power inequalities.

Researchers who came to victimology from a gender equality perspective have made mainstream victimologists more sensitive to gender issues and to power inequalities generally.

In one important respect the new generation of victimologists focusing on gender issues seems to be in full agreement with the pioneers of penal victimology. According to both, victims must not be studied purely in medical terms. Criminal victimization is not a clinical phenomenon. The key to a better understanding of the problems of crime victims is that they have been wronged by another human being and that their shattered sense of justice must be repaired. Victims must not only be given therapeutic help. They must also be rendered justice.

## **b. General Victimology**

The second mainstream of victimology is usually called general victimology. Like penal victimology, this stream was also first explicitly described by an Israeli, criminal law scholar Mendelsohn. In one of his post-war publications, Mendelsohn advocated a general study of what now he called "victimology", with a view to reducing it by preventing and victim assistance. In later papers he called for the establishment of victims' clinics. The assistance for victims should be based on a specific personal, social cultural rehabilitation theory.

Mendelsohn advocated the development of general victimology as a discipline in its own right, independent of criminology or criminal law, which



would assist governments in minimizing human suffering. This new definition of victimology must of Course be understood against the backgrounds of the human rights abuses during the second world war which Medelsohn was never involved in setting up practical care facilities for victims, he may nevertheless be regarded as the spiritual father of what is now know as the victims movements.

In almost all developed and many developing nations provisions for victims assistance have mushroomed since the seventies. In many countries criminal procedural law has been modified as to give crime victim a better deal. Victimologists became victim advocates. Victimology was transformed from a victimology of action. Parallel to this global reform movement, clinical research involving victims of crimes and disasters has expanded over the past twenty years.

The stream differs not only in its definition of the scope of victimology but also in its focus on assistance or treatment rather than on the analysis of the genesis of the victimization. A fitting slogan for this stream of victimology would be that victimology should not ot seek to interpret victims but help them. An alternative name would be assistance oriented victimology.

General victimology has also attracted political criticism. It is said that the status of victims is too readily claimed by persons suffering from minor problems and that this status undermines personal responsibilities, The United States in particular is said to be in the grips of “the cultural of complaint”, Considering the seriousness of the victimizations at issue in the vitimological discourse, this criticism is far off the mark, However a critical stance towards possible excesses of applied victimology” must of course at all times be welcomed.

A complete victimology will usually provide information about the victim’s life, and this coupled with an examination of other aspects of not only the victim’s risk but the risk the offenders was willing to take to acquire that person as a victim, may provide information about the offenders as well.

Victimology has by now affirmed itself as a major research area within criminology, its nature importance and standing continue to generate a great deal of comments and controversy. Be this as it may, the study of crime victims and of criminal victimization has the potential of reshaping the entire discipline of criminology and may very well be the long awaited paradigm shift that criminology desperately needs.

Like criminology, victimology has not followed the same path in every part of the globe. And as with any other discipline, it is more advanced and more developed in certain countries than it is in others. And while there are certain similarities and commonalities in the victimology developed here and there are also significant qualitative and even quantitative differences. Despite this, recent developments in victimology have been both emphatic and dramatic and the discipline has undergone a radical transformation. The theoretical approaches that characterized early victimology were eclipsed by major achievements in the applied his remarkable phase in the evolution of victimology was one of consolidation hering theory formulation, and above all of new victim legislations and sustained efforts to improve the victims lot and alleviate their plight. In the theoretical field various models were developed is an attempt to explain the enormous variations in victimizations haclustering of victimization in certain areas and certain groups and to unravel the intriguing phenomenon of repeat victimization.

On the legislative front there was a flurry of victims bills in a large number of countries. Following the adoption of the UN declaration of Basic Prinaciples of Justice for Victims of Crime and Abuse of Power by the General Assembly of the United Nations, victims Bills of right were passed by the general assembly of the United Nations, Victims Bills of Rights were passed by the legislative bodies in several countries The developments in the applied field were even more spectacular. Among those developmants was the creation of state compensation to victims of violent crime, the re-emergence of offender restitution, and the establishment and proliferation of victim offender restitution and the establishment and proliferation of victim offender mediation programmes.

One sector that experienced a great expansion is that of victim services. Victim therapy became a popular and fashionable way of dealing with the traumatic effects of victimization. Based on this dynamic history, on past and present trends the paper makes an attempt to identify some likely future developments in trends the paper makes an attempts to identify some likely developments in victimology. It suggests that a transition from utopian idealism to hard realism will occur accompanied by a growing emphasis on scientific research particularly qualitative research. It foresees that the need for advocacy and partnership will decline and predicts the demise of victim therapy. Future development in victimology are seen as intimately linked to the acceptance and implementation of the restorative justice paradigm. The conclusion is that victimology will likely develop into a truly scientific discipline and a truly humanistic practice.

### **c. Symposium of Victimology**

It is certainly coincidence that the 10<sup>th</sup> international Symposium on victimology is being held in the first year of a new millennium. What more appropriate moment to make a critical assessment of this fascinating discipline and see where it stands today of where it is going? There could be better time to analyze its evolution take stock of past achievements and prepare for the problems, the hurdles and the challenges that lie ahead. Surprisingly enough no comprehensive history of the discipline has ever been written, and there are no systematic; assessments of its present state. It could well be that the strong applied orientation that has dominated victimology in the last two decades has obscured the need for such important historical and theoretical analyses. The task is not impossible in the case of victimology a young developing discipline which emerged in the second half of the 20<sup>th</sup> century.

Victim assistance programmes have flourished in some societies, but are still unheard of in many parts of the world. Victimization surveys have been conducted on a regular basis in some places and are conspicuous absent in others. Victimological therapy is being encouraged and practiced in some cultures but is frowned upon in others. Courses and seminars in

victimological have been in existence for several decades in some universities but have been totally lacking in others. Such huge differences however should not make it impossible to provide a more or less unified picture of the discipline evolution or an insightful analysis of its current state and its future developments. However as with all global and concise overviews, generalizations are inescapable and oversimplifications unavoidable.

#### **d. Victimology in the Past**

Early victimological notions were not developed by criminologists or sociologists, but rather by poets, writers and novelists” Thomas De Quincey, Khalil Gibran, Aldous Huxley, the Marquis De Sade, Franz Werfe/, are only a few of those writers who can be described as literary victimologists. The first systematic treatment of victims of crime appeared in 1948 in Hans Von Hentig’s book ‘The Criminal and His Victim’. In the fourth part of the book, under the provocative title The victim’s contribution to the Genesis of the crime von Hentig criticized the static unidimensional study of the offender that had dominated Criminology until then. In its place he suggested a new dynamic and syndic approach that pays equal attention to the criminal and the victim. Von Hentig had treated the topic earlier in a paper published in the journal of criminal law and criminology in 1940/41.

Von Hentig insisted that many crime victims contribute to their own victimization, either by inciting or provoking the criminal or by creating or fostering a situation likely to lead to the commission of the crime. Other pioneers in victimology, who firmly believed that victims may consciously or unconsciously play a casual role, outlined many of the forms this contributions can take negligence, carelessness, reclines imprudence and so forth. They pointed out that the victims role could be a motivational one (attracting, arousing, inducing, inciting, enticing) or a functional one (provoking, precipitating, triggering, facilitating, participating) (Fattah 1991).

Von Hentig’s book was followed by a number of theoretical studies that dealt with victims types, victim -offender relationship, and the role victims play in certain kinds of crime. The book also provides an impetus for several empirical studies that paid special attention to the victims of specific

offences such as criminal homicide (Wolfgang 1958, Fattah 1971) rape (Amir 1971), robbery (Normandeau 1968) aggravated assault (Pittman and Handy 1964; Curtis 1974), fraud (Padowetz 1954), blackmail (Hepworth 1975) among others.

The term victimology was coined in 1949 by an American Psychiatrist, Frederick Wertham who used it for the first time in his book. The show of violence, in which he stressed the need for a science of victimology.

During the early years of victimology, literature on crime victims remained relatively small when compared to that on criminology. During the 1980's however a great wave of important books and articles marked the coming of age of victimology (Rock 1994). At present it is fair to say that the study of crime victims has become an integral part of criminology.

Today, the need for criminology to thoroughly study the victims of crime may appear obvious and axiomatic. It may seem surprising therefore that such an obvious need has escaped the attention of criminologists over a century.

Although victimology has by now firmly established itself as a major research area within criminology, its nature, importance and standing continue to generate a great deal of comment and controversy. Rock (1994: xi) describes victimology as a 'relatively amorphous discipline' and at the fifth international Symposium on victimology (Zagreb, August 1985), Cressey openly declared that victimology is neither a scientific discipline nor an academic field. He called it instead a non academic programme under which hodge-podge of ideas, interests ideologies and research methods have been rather arbitrarily grouped'.

Be that as it may the study of victims and victimization has the potential of reshaping the entire discipline of criminology. It might very well be the long awaited paradigm shift that criminology desperately needs given the dismal failure of its traditional paradigms: search for cause of crime deterrence rehabilitation, treatment, just desert, etc.



## **1.2. RECENT MICRO VICTIMOLOGY TO MACRO VICTIMOLOGY**

### **a. From Development to Macro Victimology**

In the 1970s individual studies of the victims of specific crimes popular in the early stage of victimology were overshadowed by large -scale victimization surveys, which transformed the micro approach into a macro approach. The primary purpose of these surveys was to determine the volume of victimization, to identify the victims population, and to establish the socio - demographic characteristics of crime victims. While this macro approach proved to be quite useful to the study of trends and pattern in victimizations, and to the analysis of the social and spatial distribution of some types of crime, it revealed very little value in understanding the psycho -and psychodynamics of criminal behaviour, the process of victims selection, victim - offender interactions, the victim's dynamic role in various crimes, and so forth.

### **b. From Theoretical Victimology to Applied Victimology**

In the last twenty -five years, victimology has undergone a major transformation. Early victimology was mainly theoretical concerned almost exclusively with causal explanation of crime and the victim's role in those explanations. It focused mainly on characteristics of victims behaviour as a situational variable, as a triggering, actualizing or precipitating research carried out by Ellenberger, Wolfgang, Amir, Normandeau, Curtis, Silverman and Fattah among others. Concern for the plight of crime victims could be found primarily in the modest state compensation programmes to victims of crime that were set up in some countries such as New Zealand, England, Canada and the US.

Theoretical victimology became the object of unwarranted attacks and unfounded ideological criticism. It was portrayed by some (Clark and Lewis 1977) as the art of blaming the victims, alleviating their plight and affirming their rights. A political movement was born and victimology became increas-

ingly defined and recognized through its applied component victimology meetings mirrored the transformation of victimology from an academic discipline into a humanistic movement, the shift from scholarly research to political activism. These meetings were often turned platforms for advocacy on behalf of victims.

This transformation of victimology had serious implications. One of the consequence was to refocus the notion of criminality on conventional crimes that had a direct, immediate tangible victim. White -collar crime corporate action causing grievous social harm whether legally defined as crimes or not were once again relegated to the background. The metamorphosis also had a negative impact on criminal policy. It helped reinforce primitive vengeful to crime and provide much needed ammunition to conservative politicians, thus enabling them to implement their punitive agenda.

### **c.Victimology Today**

Victimology today is very different from victimology in the 1950s or the 1960s. Scientific disciplines undergo constant evolution, through the pace of change may vary from one discipline to another. Victimology has undergone not only a rapid but also a rather fundamental evaluation in the last two decades. The decades of the 1980s and 1990s could easily be described as a period of consolidations, data gathering and theorization, with new legislation, victim compensation, redress and meditation and assistance and support to enable victims to recover from the negative effects of victimization.

### **Consolidation**

In the last few years the discipline of victimology has firmly become established on the academic scene. There has been substantial increase in the number of universities and colleges offering courses in victimology and related subjects. Numerous books and articles have been published in different languages, and in addition to several periodicals published in local languages, an international review of victimology in English, was put out by

AB academic publishers in Britain. A number of national and regional societies of victimology have been established. Japan has been a leader in this respect thanks to the tireless efforts of the world-renowned victimologist, Professor Koichi Miyazawa, and a dynamic group of his students and followers. The World Society of Victimology continues to hold its international symposia once every three years. The last one the mint in the series, was held in Amsterdam in August 1997 and drew a record number of participants. All in all victimology is no longer a subject of bewilderment or idle curiosity, but is slowly becoming a household world. This is being facilitated by the extensive coverage crime news and victims issues are receiving in the mass media, by the wide publicity victims programmes are getting and by the proliferation of victim services and victim assistance programs in many countries.

One of the most important developments in the field victimology in the last twenty years has been the formal approval by the General Assembly of the United Nations on November 11, 1985 of the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power". In adopting it, the General Assembly stated that it was "Cognizant that millions of people throughout the world suffer harm as a result of crime and abuse of power and that the rights of these victims have not been adequately recognized".

#### **d. Theory Formulation**

One of the primary tasks of theoretical victimology is to collect empirical data on crime victims. The main instruments used at present to collect this information is victimization surveys, conducted at a local, regional national and international level. Worthy of notice among these surveys are the ones carried out on a regular basis, at regular intervals in England and the U.S. the British crime survey and the national Survey (the United States). Each of these surveys yields a wealth of information on crime victims. Both of them allow for a through analysis of the temporal and spatial patterns and trends in various types of victimization, has been largely expanded. Several new questions have been added to the instrument in recent years, in order

to explore previously uncovered areas such as the levels of fear of crime, the levels of satisfaction with police action, the reason for not reporting an incident to the police, the consequence of victimization, etc. The surveys further examine the measures taken by the respondents to prevent certain types of offence or to minimize the changes of future victimization. Some Surveys have tried to establish whatever link may exist between offending and victimization by including questions requesting respondents to self-report acts of delinquency they might have committed. These latter questions have related a strong interrelationship between offending and victimization. In their London, England survey Sparkes, Genn, and Dodd (1977) found victims of violent crime to be significantly more likely than non-victims to self-report the commission of violent crimes. Gottredon (1984) analyzed the 1982 British Crime Survey data and was struck by the relatively strong interrelationship between offending and victimization. For persons with at least one self-reported violent offence, the likelihood of personal victimization was 42 per cent, or seven times that of person reporting no self-reported violent offence. The British Crime Survey Scotland (Chambers and Tombs 1984) revealed that 40 percent of respondents admitting an act of assault were themselves victims during the same period.

Despite the methodological and practical problems of victimization surveys and despite their limitations they have allowed researchers to collect a huge amount of data on victims of crime that is extremely rich in variety and detail. Thanks to victimization surveys, we now know that criminality and victimization are clustered within certain groups and certain areas, and that there is much greater affinity between offenders and victims than has been commonly believed. This is not to say that all victims of crime share the attributes of their victimizers. It is only to stress that the two populations have several common characteristics.

An important step on the road to comparative victimology was reached with international crime surveys. The surveys were a useful attempt to collect standardized victimization data from a number of countries using the same questionnaire in each country. Their main purpose was to avoid, the

problems of comparing data collected by means of different instruments using different methodologies. Field data for the first international crime survey were gathered in January 1989 using the Computer Assisted Telephone Interviewing method (CATI) al: the results were published in 1990 (Van Dijk et al.,)

A second round of the International crime survey was carried out In 1992. Some of the countries that participated in the first survey, such as Switzerland, Norway and Northern Ireland, did not take part in the second. But he second survey included some countries from eastern Europe that did not participate in the first one such as Poland and the former, (zechoslovakia (See Del frate et al., 1993).

The third sweep of the international crime victim survey was carried out in 1996-97 in twenty countries in transition. These were the former socialist countries of Eastern Europe from Poland to Mongolia in the east and from Albania, Bulgaria and Macedonia in the south to the Baltoc countries Estonia, Latvia, and Lithuania in the North. The national reports from this survey were published in 1998 by the United Nations Interregional Crime and Justice Research Institute (UNICRI) (Hatalak et al.,)

### **e. Theoretical Models**

The wealth of data collected mainly through victimization surveys has led to various theoretical formulations. Models have been developed to offer plausible explanations for the variations in victimization risks, and for the clustering of victimization in certain areas and certain groups. They have also helped to unravel the intriguing phenomenon of repeat victimization. The different models are presented and summarized in the book, Understanding Criminal Victimization (Fattah, 1991).

### **f. Garofalo's Contribution**

One of the first and most important models explaining the differential risks of victimization is the lifestyle model developed by Hindelang, Gottfredson and **Garofalo** (1978). This model posits that the likelihood an

#### **Check Your Progress**

1. What do you know by Penal Victimology
2. What do you mean by General Victimology.
3. Briefly examine Victimology in the Past.
4. Explain Macro Victimology.



individual will suffer a personal victimization depends heavily on lifestyle. Using lifestyle to explain variations in risk is probability of accidental death or injury is in many respects related to people's lifestyle and the kind of activities in which they are involved. Physicians have repeatedly stressed the close link between lifestyle and routine activities and the risk of suffering certain diseases such as lung and skin cancer, high blood pressure and cardiovascular ailments, liver cirrhosis, Aids etc. As a matter of fact the lifestyle concept permeates the explanatory model given for higher or lower susceptibility to a wide variety of diseases. The belief that lifestyle can influence the probability of victimization by increasing or decreasing people's chances of becoming victims of certain crimes may be seen as a logical extension of this concept to the social sphere.

Another explanatory model is the Routine Activity approaches developed by Cohen and Felson 1979. The focus in Cohen and Felson's approaches is on "direct- contact predatory violations," which are those involving direct physical contact between at least one offender and at least person or object which that offender attempts to take or victimization is the outcome of the convergence in space and time of three minimal elements. Motivated offenders suitable targets, and absence of capable guardians. The central factors underlying the routine activity approaches are opportunity, proximity / exposure, and facilitating factors.

The "lifestyle" and 'routine activities' models are by means the only ones. There is also the opportunity model (Cohen et al., 1981) and the Dutch model (Van Dijk) and Steinmetz undated). The opportunity model incorporates elements from the previous two and posits that the risk of criminal victimization depends largely on people's lifestyle and routine activities that bring them and/or their property into direct contact with potential offenders in the absence of capable guardians.

In an attempt to integrate the various into a comprehensive one, it was grouped all the seemingly irrelevant factors into ten different categories (Fattah, 1991) These are

1. Opportunities which are closely linked to the characteristics of potential targets (person, households, businesses) and to the activities and behaviour of these targets.
2. Risk factors, particularly those to sociodemographic characteristics such as age and gender area of residence, absence of guardianship, presence of alcohol and so forth.
3. Motivated offenders: Offenders even non professional ones, do not choose their victim target at random but select their victims targets according to specific criteria.
4. Exposure: Exposure to potential offenders and to high risk situations and environments, enhance the risk of criminal victimization.
5. Associations: The homogeneity of the victims and offender populations suggests that differential association is as important to criminal victimization as it is to that crime and delinquency. Thus individuals who are in close personal, social or professional contact with potential than those who are not.
6. Dangerous times and dangerous places: The risks of criminal victimization are not evenly distributed in time or space -there are dangerous times such as evening late night hours and weeks ends. There are also dangerous places such as places of public entertainment where the risks of becoming a victim are higher at work or at home.
7. Dangerous behaviours : Certain behaviours such as provocation increase the risk of violent victimization while behaviours such as negligence and carelessness enhance the changes of property victimization. There are other dangerous behaviours that place those engaging in them in dangerous situations where their ability to defend and protect themselves against attacks is greatly reduced. A good example of this is hitchhiking.
8. High -risk activities also increase the potential for victimization. Among such activities is the pursuit of fun, which may include devi-

ant and illegal activities. It is also well known that certain occupations such as prostitutions carry with them a higher, than average potential for criminal victimization.

9. **Defensive / avoidance behaviours:** Since many risks of criminal victimization could be easily avoided. People's attitudes to these risks may influence their chances of being victimized. It goes without saying that risk-takers are bound to be victimized more often than risk-avoiders. This also means that fear of crime is an important factor in reducing victimization since those who are fearful for example the elderly take more precautions against crime, even curtailing their day and night time activities thus reducing their exposure and vulnerability to victimization.
10. **Structural/ cultural proneness:** There is a positive correlations between powerlessness deprivation and the frequency of criminal victimization. Cultural stimulation and marginalization also enhance the risks of criminal. Victimization by designating certain groups as 'fair game' or as culturally legitimate victims.

### **1.3. NEW LEGISLATION**

There has been a flurry of victim legislation in recent years in a large number of countries. Following the adoption of the UN Declaration of Basic Principles of Justice for Victims, so called Victims Charter of Rights or Victims Bills of Rights were passed by legislative bodies in various societies.

In the United States there was an unsuccessful attempts by the victim lobby to bring about a change to the Sixth Amendment of the U.S. Constitution which would hence provided a legal basis for protecting the rights of crime victims (Dolliver 1987). However as Karmen (1990) reports since 1980 in almost every American state, legislatures passed various statutes acknowledging basic rights for victims. Among those are the right to be notified about and to participate in judicial proceedings to promptly get back stolen property that was recovered to be protected from intimidation and harassment and to receive restitution or compensation.

One particular initiative that received a great deal of criticism is the **Victim Impact Statement [VIS]**, designed to allow victims some input in the courts decision in their case by providing a statement of the impact the victimization has had on their lives and their families, was singled out for particular criticism, and encountered a lot of resistance particularly from those anxious to preserve the objectivity of the judicial process.

In the U.S., the Supreme Court barred victim impact testimony in capital cases as violation the Eight amended of the American constitution (Booth V. Maryland 1987, and South Carolina V. Gathers, 1989). But a couple of years later in Payne v. Tennessee (1999), the court upheld the use of victim impact testimony at the sentencing stage of a capital case (Kelly and Erez 1997)

#### **a. Victim Compensation**

Redress to crime victim in the form of monetary compensation by the state was the first attempts in recent history to alleviate the plight of victims and to improve their lot. In the 1960s a British magistrate Margery fry, and others called for state compensation to crime victims. Their pleas led to the creation of government indemnification programmes in New Zealand, the United Kingdom, North America, Europe and elsewhere. These programmes have been operating for more than a quarter of century and many have been subjected to varying kinds assessments and evaluations. (Doerner 1978; Miers 1978 Burns"1980 Elias 1983a).

In England David Milers (1983, 1990), quoted by Maguire and Shapland (1997: 218) argued that states compensation is essentially a symbolic act be governments to show their concern for victims but has little real intent of translation into hard cash.

Most victims of property crime who are concluded from state compensation schemes do not have and cannot afford private insurance. In four out of five cases the culprit neither identified nor caught. And the few who are arrested, charged and convicted are more often than not so poor or

insolvent that nothing can be obtained from them through a civil judgment. To make matters worse, in most countries the collection of criminal fines continues to have priority over the payment of civil damages or of restitution compensation orders. (Fattah, 1999).

**Arjun - Vs - State of Tamil Nadu 1997 (Cri. L.J)**

In this case the Accused "A" Killed "B". He was awarded Life Imprisonment by the sessions Court. He appealed against the sentence. In the mean while B's wife had also failed a case to get compensation. Both the case came before "Justice Karpaga Vinayagam". B's wife said that Punishing "A" B has no benefit, but he pays compensation her family will be benefited. The Accused may also be released because he was of tender years who was also a graduate. So Justice ordered his release if he was able to pay 3 lakhs rupees. He must pay immediately one Lakh and the remaining two lakhs he could pay at intervals specified in the Judgement. Thus B's wife got compensation required for her livelihood.

**The state of Maharashtra - Vs - Dadaji (1984 Cri. L.J. 1023)**

In this case A was accused of raping a girl and committed murder on her. The trial court acquitted him because the prosecution was unable to prove the case. A was not able to come out Jail because he was very poor and was not able come out on bail. He was in Jail for three years. The court ordered the Govt. to pay him compensation of Rs.2000/-

Victims of violence for whom the schemes are designed do not fare much better. The conditions of eligibility for state compensation are such that only a small fraction qualify. In almost all systems, eligibility is contingent upon reporting the offence to the police and the victims willingness to cooperate with the criminal justice system. Many have a means test ensuring that compensation is given only to the poorest of the poor. Most exclude violence among family members, even though a good part of all violence occurs in domestic settings. Most also exclude (or drastically reduce the awards to) victims who provoked or otherwise contributed to their own vic-

timization. We rule that renders the majority of victims of violence for state compensation is the high minimum limit that is usually set for compensation and below which victims do not qualify.

In the UK for example the lower limit was initially set at £ 1000 pounds despite the recommendations made by victims groups to remove it. The burden of proof is upon the victim and very often is difficult to prove that the injury resulted from a criminal attack when the attacker has run away and there were no witnesses. With the exception of sexual victimization most schemes do not provide funds to compensate the victimization, most schemes do not provide funds to compensate the victims emotional pain and suffering. As a result of all these restrictions a large number of victims do not qualify.

In spite of the service that politicians pay to crime victims, several governments have decided in recent years to transfer the financial burden of victims compensation to offenders through a levy called a victim fine surcharge. This surcharge is imposed on those who are sentenced to a fine, even when the sentence is for so called victimless crimes (Fattah 1999)

## **b. Offender Restitution**

Restitution by the offender to the victim was one of the earliest forms of redress given to those who suffered injury or harm through the actions or negligence of others. This was the composition or wergeld paid to the victim or the victims of violence, restitution by the offender has re-emerged as a means of redress in property offences as well as in violent crimes. The problem is that the vast majority of offenders are either unemployed or do not have the financial means that would make it possible for victims to collect restitution. Added to this problem is the above mentioned fact that in many countries the collection of the penal fine takes priority over restitution orders.

Although there are different models of offender restitution it is doubtful that it will become at least in the near future a viable alternative to state compensation as a means of redress to the victim. After reviewing the re-

sults of the evaluation of a number of local schemes conducted in different countries, (Maguire and Shapland).

The Conclusions seem universal. Financial restitution is only a small proportion of the cases sent for mediation (the majority ending with an apology or in some contract concerning the offenders behavioural) Mediation cases themselves remain very much a minority disposal in terms of the flow of criminal justice cases overall. The dominant model is still prosecution or some form of discontinuance (Such as a formal caution in England and Wales), Sometimes accompanied by work with the offender -but rarely involving the victim.

### **c. Victim Offender Mediation**

Another important development in recent years has been rediscovery of restorative justice. Restorative justice, widely practiced in small agrarian rural societies has a long and rich history in the aboriginal communities in Australia, Canada's First Nations and the Inuit communities of the Canadian North. The quasi -universal disenchantment with the punitive retributive justice system of punishment. A turning point was the publication of a seminar article by Nils Christie in 1977 entitled "Conflict as property in it. Christie explained that the root problem of the system is that conflicts were stolen from their legitimate that the root problem of the system is that conflicts were stolen from their legitimate owners the victims and became the property of professionals rather than people. Christie's ideas provide a strong impetus to those who were calling for the replacement of the destructive, unproductive and ineffective system of punishment with the conflict rather than solve it. And instead of bringing the feuding parties closer to another, it widens the gap that separates them (Fattah 1997).

Spearheaded by the Mennonite Church, Victims -Offender Reconciliation Programmes were set up in Canada and the United States in the mid 1970s and then spread to many other countries. Writing in 1983 Dittenhoffer and Ericson (1983, 1992) noted that the notion of VORP rapidly grew in popularity. They pointed out that at the time, in Ontario alone there were 24



VORP centres operating, with similar programmes in others across Canada. The early programmes have now been in existence for over twenty years and the restorative justice movement is expanding at a fast pace. Aside from North America it has established strongholds in Germany, the United Kingdoms, Belgium, France, among others. Three years ago, the council Europe in Strasbourg set up an Expert committee on Meditation in penal matters. The committee's report and its recommendations were released in 1999.

Despite the appeal and popularity of the notion of victim -offender reconciliation, the goal of 'reconciliation' proved to be difficult to achieve in practice. In most programmes the primary objective was to ensure restitution by the offender to the victim and to see to it that the offender fulfil the obligations agreed upon in the meditation agreement. The programmes then changed their names from victim -offender reconciliation to victim offender meditation.

#### **d. Victim Services**

The last twenty years have witnessed an unprecedented development in the field of victim services have been called the growth industry of the decade. The expansion of service programmes for victims of crime in the United States, Canada the United kingdom and many other countries has been nothing short of phenomenal (Fattah, 1992). In 1990, Davis and Henley estimated the number of victims service programmes in the United States to be in excess of 5,000 whereas 20 years earlier there had been none.

Most assistance programmes particularly those housed police departments refer victims according to their needs to existing services within the community. Some also provide victims with urgently needed help: replacing a broken window take damaged lock, fixing vandalized car driving, cleaning, shopping helping with children and so forth. There are also various programmes that provide special assistance to certain categories of victims, for example victims of rape child, victims of; sexual assault, victims of family violence etc. rape crises centres and shelters for battered women are operating in many places. Overall however the two most important services

provided to crime victims by victims assistance programmes are information and moral support.

## **1.4. THE FUTURE OF VICTIMOLOGY**

### **a. Towards a Realistic Approach**

Based on the above review of victimology past and its present state it should now be possible to identify some likely future trends.

#### **1). A Translation from Utopian Idealism to Hard Realism**

As people grow older they become wiser and more pragmatic. A certain realism sets in brought about by the harsh realities of their life experience, by disappointments and setbacks, by a better understanding of what is possible and what is not by what can be achieved. Gradually they learn to abandon utopian dreams and opt instead for more attainable goals. This transformation is likely to take place in victimology once many of today's young activist realize that some of their well intentioned demands are neither reasonable nor practical, and are likely to lead if implemented to an unfair unjust and one sided system. Criminology has undergone a similar transformation. The 1960s and 1970s were the decades when romanticism and idealism in Criminology reached their peak, spearheaded by the so -called "new Criminologists". The dreams of that period were shattered with the advent of an era of conservatism brought about by the election of simple -minded primitive .thinking heads of government: Reagan, Thatcher and Mulroney to name but a few. To no one's surprise, the idealism of the new Criminologists", their exaggerated optimization gave way to what came to be called "left realism or radical realism realist Criminology broke with the romantic and idealistic conceptions which have been conveyed by radical Criminology (Matthews and Young 1986: Fattah 1 997).

It seems not only possible but also quite probable that a similar development will occur in victimology. In their attempts of focus on the suffering of the victim, and do achieve political and ideological goals, leaders of the victims lobby have steadily refused to acknowledge that victimization is

a normal and natural occurrence a fact of life, portraying in instead as a pathological and abnormal phenomenon. They have adamantly rejected any claim even what support by irrefutable empirical evidence, that the roles of victim and victimizer are interchangeable and that many incidents of violent victimization are the outcome of dynamic and explosive interactions rather than the deliberate and unilateral actions of a flawed perpetrator's personality.

The current dominant view in victimology of a bad offender and a good victim, of an innocent victim and a guilty criminal will slowly give way to the more realistic and defensible of two human beings caught in a web of intricate social relationship and human emotion.

**S.P.S. Rathore** former D.G.P. of Punjab and Haryana - was convicted of Molesting a teenager "Ruchika Girhotra" - the girl later committed suicide. Rathore is under going imprisonment. He pleaded before the High court of Haryana to Grant him Provisional Pension.

### **b.Realism**

Realism means that vindictiveness which we know to be harmful and destructive will make room for a balanced view of victimization and for a community response where empathy, compassion, tolerance and forgiveness replace current calls for vengeance.

Realism will also lead to a redefinition of the subject matter of victimology if victimology is not to lose its scientific character completely, if it is not to become a purely political and ideological movement, a redrawing of its boundaries and a retrenchment of its subject matter seem inevitable. Thus realism will protect victimology against the real danger of being transformed into mere preoccupation with human suffering. Realism will make it abundantly clear that there is no such thing as a science of human suffering.

Because as Flynn (1982) pointed out at one of the earlier international symposia on victimology is all and suffering (ranging for example from mental illness to neuroses) were to be defined as victimization who would

not be a victim? The so called global victimology preached by some will give way to a realist victimology a truly scientific victimology that gathers its data using acknowledged research methodology and bases its action on scientific theory not on political ideology.

## **2) A growing emphasis on research particularly, quality research**

While activism to affirm victims and to improve their lot has been in full swing on many fronts animated by political and ideological considerations, research has been lagging behind and in many instances totally lacking. Several areas pivotal to the theory and practice of victims assistance, have been investigated and are in dire need of solid empirical research. One has to wonder why it is that when the field of victim services is flourishing, research on the effects of victimization and on the impact of victim assistance is hard to come by. And yet it seems obvious that individualized care, individualized assistance, and personalized treatment or counselling require a profound knowledge of the differential impact of victimization and the differential needs of crime victims (Fattah 1999) Clearly this is an area that offers golden opportunities for original empirical qualitative research, but in an area that offers golden opportunities for original empirical qualitative research, but is at any sketch of the imagination the only one. Being a young discipline, many years of victimology remain virgin territory and have yet to be explored by inquisitive and adventurous researchers.

Quantitative victimology research, exemplified in local, regional, national and international victimization surveys will probably lose much of its popularity due to the law of diminishing returns. The additional knowledge to be gained from the repetition of these surveys particularly at short intervals will not be sufficient to justify the mounting costs. The arguments will be made that the large sums spent on national victimization surveys could be better spent either to fund much needed qualitative research or add to the subsidies of poorly funded victim assistance programmes and victims services.

### 3) A declining need for advocacy partnership

The victim movement has achieved phenomenal success in many countries. It has focused attention on the plight of crime victims in modern, industrialized society and has sensitized the general public, politicians and the functionaries of the criminal justice system to the traumatic and long-lasting effects of certain types of criminal victimization. Victim groups have managed to raise public consciousness about certain harmful and traumatizing behaviours and sexual victimization child, abuse family violence, and drunken driving to mention but a few. The movement has been influential in changing social attitudes to victims of rape and domestic violence, among others and in the practices of the criminal justice regarding those victims and in general all crime victims.

#### d. The demise of therapy

In the 9th International Symposium on victimology in Amsterdam, some of the dangers of so called “**victim therapy**”. were highlighted about the risks involved in therapy and about the unintentional harm that could result. Despite the vested interest and the enormous financial and professional benefits that a huge army of therapists currently repeats from "treating" victims. It is predicted the demise of victim therapy is not too, distant future. Rehabilitation and treatment of offenders extremely popular not too long ago. have fallen into disrepute. There are strong reasons to believe that a similar fate will befall victim therapy. The natural healing powers of the human psyche that are being interfaced with, and hindered by professional therapies are bound to reaffirm themselves. Alternative healing practices which are currently competing with traditional medicine for treating physical and psychological ailments, will prove to be better, more effective, less harmful and much less costly than professional therapy. Reinforcing the natural healing powers of the human psyche strengthening for family and social networks of potential and actual victims, will be seen as preferable for alleviating victim suffering rather than the current "healing enterprise. Once this happens it will be more difficult to exploit the traumatic effects of victimization and the psychological suffering of the victim in the furtherance therapists self-interest.

#### Check Your Progress

5. What do you mean by Theoretical Victimology.
6. How will you Formulate a Theory.
7. Examine Garofalo's Contribution.
8. Explain Victim Compensation.

### **e. The future of the restorative justice system**

It seems axiomatic that the future of victimology will influence and be influenced by developments in the justice system. Because of this, the future of victimology will largely depend on the extent to which the paradigm of restorative justice is accepted and implemented.

Societies undergo perpetual change. Today's society is undergoing rapid and radical transformation. Justice paradigms have to change with social evolution in order to remain in harmony with prevailing belief systems and to take stock of whatever advances and discoveries are achieved in the field of Criminology and Penology. The archaic goals of expiation and atonement will not be in harmony with the realities and beliefs of the secular, post industrial society of the 21st century. In modern secular societies, the notion of risk and harm are gradually replacing those of evil, wickedness, malice and are bound to become central concepts in the social and criminal politics of the future. Future politics of crime control will be largely based on risk assessment, risk management, risk coverage risk reduction and risk prevention. The measurement of harm physical material and mental will likely become the central component of social reaction to crime. The primary aims of such a response will be redress, reparation and compensation. It is hoped that the arbitrary distinction between crimes and civil torts will disappear and that the artificial boundaries that have been erected over the years between criminal courts and civil courts will be removed. All harmful actions will generate an obligation to redress coupled with endeavours to prevent their future occurrence. This will be the era of restorative justice. (Fattah 1999)

Such a paradigm shift will have a profound impact on victimology of the future. In the past two decades, attempts to exploit the cause of crime victims for political and conservative efforts to sell the politics of law and order under the pretext of doing justice to those victimized by crime often required the portrayal of victims as vengeful, vindictive even bloodthirsty. Those claiming to represent and to speak on behalf of victims propagated the erroneous view that concern for crime victims invariably requires harsh, punitive justice; policies. While the distress of some victims may be so over-

whelming that they will demand the harshest possible penalty for their victimizer, this could hardly be said of the majority of victims (Boers and Seear 1991; Preiffer 1993). And if the primary purpose of social intervention is to restore peace, redress harm heal injury and prevent repetition of the offence then it is easy to foresee application of the restorative justice paradigm with its constructive elements mediation, reconciliation, restitution and compensation as the way of the future.

It is thus to be expected that the politics advocated by victimologists in the future as well as victimological practices and action will be very different from those of yesteryear and of today. If there is a safe prediction to be made about victimology of the future it is that it will become a truly scientific discipline and truly humanistic practice.

Victimization is "the result of an imbalance individual and his environment". Victims are persons who have suffered environmental imbalances which resulted in "distress" for example trauma usually causes

### **Victimological Frameworks**

Three basic victimological strands of theoretical thought have been identified by Mawby and Walklate: Positivist victimology, radical victimology and critical victimology. These strands (frameworks) group the various perspectives concerning work or just approaches in dealing with the problems of responding to victimization in its broadest sense.

#### **f. Positivist Victimology;**

Similar to Karmen's is "conservative victimology and Walklate's conventional victimology is focused interpersonal street crimes especially victims who contribute to their own victimization. It excludes rape, abuse and other forms that are esoteric victimization that occur in private. This is a form of victimization that uses science with its statistics, patterns variables etc. to produce typologies. This strand of victimology is concerned with the separation of science from humanitarian endeavours. This type of victimology would include the various victim assistance movements support the retributive



justice process. These would include such organization as NOVA in America, Die Weisser Ring in German and victim support schemes in England. It also would include the topology in the positivist victimology has been clearly the most influential area of victimology especially in terms of programmes developed and research funded. The basic criticism of positivist victimology are that it implies that social change is gradual and incremental and thus does not follow for differences in definition of victimization (especially across cultures.) It does not explain why or how victims resist the victim label and recover to them accept a 'survivor' label and it does not allow for dramatic social changes which produce victimization quite different from traditional victimization examples would be victims of the abuse of power, victims of consumer fraud, victims of terrorism and victims of religion cults.

#### **g. Radical Victimology**

Ironically it was Mendelsohn who proposed that victimology go beyond the traditional concern with crime. Although his typology was clearly in the positivist mode, he never revised his typology to include his later more radical proposal for a general victimology. In his stand of victimology one finds the concern of the unconventional themes that are missed in positivist victimology. This type of victimology incorporates such themes as abuse of power, victim of police violence, victims of war, victims of a state, victims of a terrorism etc., In the focus of the state or power lies the link to radical criminology. In 1972 Richard Quinney was well known for his work in radical criminology focused on victims of capitalist states. Ten years later Lehmann included the radical focus on victims of socialist states. Yet a further dimension of radical victimology is the concern for human rights in its broadest sense. Soon thereafter R. Elias began to publish books with titles like: Victims of the systems 1983 and the Politics of victimization (1986) coming full circle back to Mendelsohn's concern for all forms of victimization. This form of victimology includes the United Nations Declaration of Human Rights (Article 22) as well as the Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power. Although radical victimology by pointing to the problems caused by laws and oppressive states

-particular class, there are still aspects of victimization which are not considered victimization of gender race and age to mention a few.

## **h. Critical Victimology**

The principle of this framework of theoretical through is on who has the power to apply the victim label and what are the significant aspects of making that decision. like the labeling theorists of Criminology, Social Psychology and symbolic interactions also has a role to play in explaining the process of victimization. This approach searches for an empirically sound and comprehensive understanding of victimization. It recognizes the complexities of multifactor precursors to victimizations and process that the precursors to victimization and proposes that the precursors to understand victimization and process that the only rational way to understand victimization fully is with the scientific method. That means selecting theoretical models to test formulation of acceptable realistic and factual conclusions. Essentially broadest social context as a dynamic temporal and transdisciplinary phenomena.

## **Rate of Function of Victimologists**

### **Benjamin Mendelson**

The father of victimology **Benjamin Mendelsohn** a Rumanian practiced criminal law and in the course or preparing his cases (especially rape case) conducted extensive interviews with witnesses, criminals and victims. These interviews developed into studies which showed there was usually an extensive relationship between offenders and victims. From these primarily legal studies Mendelshon then developed between offenders and victims. From these primarily legal stL'dies Mendelsohn then developed a typology of victims and their involvement with the criminal act which ranged from the completely innocent victim to the imaginary victim. As lawyer he was mostly concerned with degrees of innocence and guilt, as his six separate categories reflect.

Mendelsohn in trying to explain the phenomena of victimization used such terms as victimity (to compare it with criminality) the conditions which surrounded victimization victimogenesis (to compare it with criminogenesis) which explains the cause of victimization" and victimology (to compare it with criminology) which is the study of victimization. One of this earliest articles about victims was about offender, victim relationship, was published in 1940 in the Italian journal *Giustizia Penale* entitled "rape in criminology". Later in his following writings he began to mention the importance of developing victim centres for all forms of victimizations that went beyond crime. Although his first focus was with crime victims, he later recognized the importance of, and similarities in needs of other forms of victims. Consequently he proposed the term "General Victimology" to include persons injured or killed accidents, abuse of power, pollution and disasters.

### **Hans Von Hentig**

Hans Von Hentig, a German Professor in his classic book. *The criminal and his victim* published in 1979 also focused on the relationship between offender (doer) and victims (sufferer). In the chapter of this book, he presented his ideas as to how the criminal law dichotomizes between the doer and sufferer. His studies also evolved into an elaborate typology which he grouped into three classes; the general classes of victims, the psychological types of victims and the activating sufferer. However his focus was primarily on risk; he used twelve categories based on psychological, social and biological factors.

Secondary victimization of legal persons, stores, factories, enterprises

Tertiary victimization -victimization of the social order

Mutual victimization -exchanged victimization

No victimization acts where the person endangers only himself and his social well being.

A law professor and criminologist by training, Ezzat Fattah in his 1991 book understanding criminal victimization. An introduction to Theoretical Victimology developed his own unique typology in which he attempted to produce a dynamic approach to victimology linked to criminology. Using the law for his orientation, Fattah presented and integrationist theoretical framework with the integration of forty macro and macro proposition. These are organized into ten categories. Opportunity risk factors, motivated offenders, exposure, associations, dangerous times and dangerous places, high risk activities, defensive avoidance behaviours, structural cultural proneness.

### **Simha Landau and R.E. Freeman -Longo**

These two Criminologists, Victimologists have developed a highly imaginative typology which is multidimensional and based on a functional sociologist view of society. This typology uses consequence, equilibrium and incremental change as the basis for understanding victimization. Its focus is on explaining regular crimes. The important categories are as follows.

1. The source of victimization
2. The legal better the normative frame work
3. The intentionality of the perpetrator
4. The identification of the victim
5. Victim Vulnerability
6. Victims perception of the victimization
7. Other's perception of the. victimization
8. Type of victimization -better the damage suffered.

### **i. Applied Victimology**

Victimology is the study of victims as caught up in an asymmetric

relationship or situation "Asymmetry" means anything unbalanced exploitative parasitical oppressive, destructive, alienation or having inherent suffering. 'Victimology is all about power differentials. The harm to a victim can be physical, physiological or economic. Serial killers generally meant to possess everything their victim has deriving satisfaction from all kinds of harm. Besides "Primary civism there are also secondary crime victims who experience the harm seconds hand, such as intimate partners family members or significant others Some social killers want to cause harm among these people also. It also makes sense to talk about harm to "tertiary crime victims" who experienced it vicariously through the medial or from exposure. Lets take a look at all the possible way a person can harm another:

1. Physical abuse -hitting, punching, pulling, slapping, grabbing, biting, kicking, bruising, twisting, throwirlg and of course killing
2. Sexual abuse -any unwanted sexual contact, sexual contact, sexual intercourse without consent, rape -an forced sexual perversion, forced unprotected sex, and forced sex with other people or animals.
3. Verbal abuse -derogatory comments, insults, humiliations or constant put -downs usually with the victim told they are not physical attractive, inferior, incompetent, unable to succeed on their own, and are not a good role model. The intention is to keep the victim under total control.
4. Psychological/ emotional abuse -manipulation and / or intimidation intended to destroy the other's self -esteem or sense of self usually over long periods of time including but not limited to destroying or depriving someone of self -esteem property personal needs for or sleep and the comforts of pets.
5. Spiritual abuse -spiritual abuse occurs as deep sense of betrayal by religious traditions or their moral agents of the community when the victim feels and faith did not protect them or that moral code of society has failed for them.

6. Economic abuse -insisting they turn over their money possessions or wealth having them beg for necessities giving them insufficient allowances for basis refusing to let them participate in things.
7. Social abuse -Jokes criticism or put downs, usually about appearance, sexuality or intelligence, false accusations, suspiciousness, constant monitoring and control of victims activities or access to information isolation.

Victimologists study these behaviour and the characteristics of people who are vulnerable for them, and the characteristics of people who are capable if resistance. Mandelson (1937) interviewed victims to obtain his data, and an analysis led him to believe that most victims has an "unconscious aptitude for being victimized. "he created a typology of six (6) victim types with only' the first type, the innocent portrayed as just being in the wrong place at the wrong time. The other five types the vast majority of victims, all somehow contributed to their own victimization and this idea was termed victim precipitation.

Von Hentig (1948) studied victims and found that the most likely type of victim is the depressive type an easy target careless and unsuspecting. The "greedy type" is easily duped because his or her motivated for easy gain lowers his or her natural tendency to be suspicious. The "Wanton type" is particularly vulnerable to stress that occur at a given Period of tie in the life cycle such as with juveniles or prostitution. Serial killers tend to prey on wanton or vulnerable types. Von Hentig's somewhat evident in the literature today. Wolfgang's research (1958) followed this lead and later theorized that "many victim precipitated homicides were in fact caused by the unconscious desire of the victims to commit suicide." Schafer's theoretical work (1968) also represented how victimology invested a substantial amount of its energy to the study of how victims contribute - knowing or unknowing -to their own victimization and potential ways they may share responsibilities with offenders for specific crimes. In fact schaffer's book. "The Victim and His Criminal" from this approach, is supposed to be corrective to Von Hentig's book, "The Criminal and His Victim".

## 1.5. THEORIES IN VICTIMOLOGY

Over the years academics have come to think about victim precipitation as a negative thing. "Victim blaming" it is called research into ways in which victims contribute to their own victimization is considered by victims and victim advocates as both unacceptable and destructive. Yet a few enduring models and near theories exist. Two or three theories are mentioned here.

1. Luckenbill's (1977) situated Transaction Model -This one is commonly found in sociology of deviance textbooks. The idea is that at the interpersonal level, crime and victimization is a contest of character. The stages go like this (1) insult -"Your Momma" (2) Clarification -"Whaddya say about my mother" (3) retaliation -"I said your momma and you too" (4) counter retaliation -Well, you're worse than me or my momma (5) presence of weapon -search for a weapon or clenching of fists (6) Unlookers - presence of audience helps escalate the situation.
2. Benjamin & Mester's Threefold Model -This one is found in a variety of criminological studies. The idea is that conditions supporting crime can be classified into three general categories. (1) precipitation factors -time, space, being lifestyle (the sociological expression "lifestyle" refers to daily routine activities as well as special events one engages in on a predictable basis (2) predisposing factors all the socio demographic characteristics of victims being male being young being poor. Being a minority, living in squalor, being single, being unemployment.
3. Cohen & Felson's (1979) Routine theory -This one is quite popular today, and briefly it says that crime occurs whenever three conditions configure or come together (1) Suitable targets -the presence of vulnerable potential victims (2) motivated offenders - people who will try to get away with something if they can and (3) absence of guardians - a lack of defensible space natural surveillance areas) and the absence of private security since the government can't do the job alone.

The phenomenon that criminals and victims often have the same socio demographic characteristics (e.g are in relatively the same are group) is known as the propinquity hypothesis and that criminals and victims often live in physical proximity to one another is called the proximity hypothesis.

Most victimologists theories fall into one of three right categories

- |                           |  |
|---------------------------|--|
|                           | The offender is seen \as a mentally disturbed individual, also usually suffering from alcohol or drug addiction. Who is venting frustration or anger at a target. The victim is also seen as mentally disturbed Who some how induced the offender to harm them.  |
| a. Psychopathology theory |  |
| b. Feminist theory        | The offenders is seen as action upon the current patriarchal (male dominated) make up of society. The victim is seen as historically socialized to accept this keep quiet about it and take what they deserve.   |
| c. Learning theory        | Three variations (1) intergenerational transmission of violence -in which adults learn it by having seen it as a child (2) learned helpless in which victimization occurs because of economic and emotional dependency and (3) cycle of violence in which both victim are caught up in a tension disinherit cycle. |

There's no one good theory in victimology. The cycle of violence theory tends to apply well with repeaters since one thing that both repeat victims and repeat offenders both share in common is denial and minimized common to all addictive cycles. Scientific prediction of violence is a rather inexact science that cannot be done intuitively. To be done properly would require awareness on at least four different levels in recognizing events that victimization events that trigger victimization. At the biological level for example brain activity would need to be monitored. At the psychologists level



how a person process and distorts information should be considered. At the macro social level deficits with communication and reality testing are probably the most important predictors.

## **1.6. SUMMARY**

In this lesson we have seen when the word victimology was coined and who coined the word. We have also seen the history of victimology - from Justinian's times till present day. We have also seen how the science of Victimology has grown in the past. We have seen victim compensation offender Restitution and victim offender Mediation and the conclusion was universal.

Dalton once said Atom cannot be split further. That was believed - it was science what had happened in future. Atom was split. By splitting it we had heat and energy. In Victimology we have studied past - Present and future of Victimology.

## **1.7. KEY WORDS**

- |                         |   |
|-------------------------|---|
| a) Criminology          | - a Science dealing with crime and Criminology                      |
| b) Victimology          | - A Science dealing with Victims. It is independent of Criminology. |
| c) Complete Victimology | - Study about victims life, Victims risk and risk of the offender.  |
| d) Symposium            | - Collection of Paper's Submitted by Jurists.                       |
| e) Macro - Victimology  | - Studies of the Victims of specific crimes.                        |

## **1.8. ANSWER TO CHECK YOUR PROGRESS**

1. Refer Para . 1.1.b.

2. Refer Para 1.1.c
3. Refer Para 1.1.e
4. Refer Para 1.2 (a)
5. Refer Para 1.2 (b)
6. Refer Para 1.2 (d)
7. Refer Para 1.2 (f)
8. Refer Para 1.3 (a)

## **1.9.MODEL QUESTIONS**

### **LONG ANSWER QUESTIONS**

1. Define Victimology. Explain the scope and the objectives of the study of Victimology.
2. Trace the historical development of Victimology.
3. What are the types of Victimology?
4. Explain Applied Victimology.
5. Explain the role and functions of Victimologists.

### **SHORT ANSWER QUESTION'S**

1. What is the contribution of Cohen?
2. What do you mean by "Life style"?
3. Explain Victim-offender Mediation.
4. Why these Victim services?
5. Examine Restorative Justice system.
6. What is the Position of Radical Victimology?

## **UNIT I**

### **LESSON 2 - VICTIMS**

#### **INTRODUCTION**

Media attention on several high profile cases in recent years has clouded the issue of "who is a victim?" For example, cases in which a victim clashes with antagonists have resulted in the "victim" being tried in the courts, and have complicated: The delineation of victim and offender, i.e. the so-called "subway vigilante", a man who shot four teenagers with an unlicensed revolver on a subway train when he feared he would be robbed. Reportedly, he perceived himself to be a victim of a mugging, and used a weapon on perceived perpetrators, in order to "defend himself". He used his Right of Private defence according to Indian Penal Code. The "would-be victim" was tried for attempted murder, assault and reckless endangerment. To some, he is/was a victim standing up for himself; to others, he is a trigger-happy gunman who reportedly overreacted to an inaccurately perceived threat (Johnson, 1986; Sullivan, 1989; Karmen, 1990).

#### **UNIT OBJECTIVE**

To Know the Characteristics of Victimology and to study how best we the common people can help the Victims of crimes and other Victims. Say Victims of business and other day to day activities of man. It may be political or consumerism.

#### **UNIT STRUCTURE**

Introduction

Unit Objective

Unit Structure

**2.1. Who is a victim**

**a). Demographic Characteristics**

**i) Gender**

**ii) Age**

**iii) Race**

**iv) Socio - economic Class**

**v) Residential Location**

**2.2. Exposure to Potential Assailants.**

**2.3. Definining Victims of Violent Crime.**

**2.4. U.N.Declaration on Basic Principles of Justice for victims.**

**2.5. The Hand book of Justice for Victims.**

**2.6. The Guide for policy Makers.**

**2.7. The Victim in History**

**2.8. Summery**

**2.9. Key words**

**2.10. Answer to check your progress**

**2.11. Moder Questions**

**2.1. WHO IS A VICTIM**

One of the first books entirely devoted to victims of crime was The Crime Victims Book (Bard, and Sangrey, 1979), which addressed the issue of “Who is the victim?” Bard and Sangrey attempted to paint a picture of crime victims, stating: “Every victim of personal crime is confronted with a brutal reality: the deliberate violation of one human being by another. The

crime may be a murder or a rape, a robbery or a burglary, the theft of an automobile, a pocket picking, or a purse snatching -but the essential internal injury is the same. Victims have been assaulted -emotionally and sometimes physically -by a predator who has shaken the world to its foundations".

In other words, we can say that a victim may be defined as any person against whom a crime has been perpetrated or attempted, unless that person is accountable for the crime or a crime arising from the same conduct, criminal episode or plan. If such person is deceased, incapacitated, the person's spouse, parent, child, sibling, grandparent, significant other or other lawful representative is included in the definition. Any victim under the age of 18 years is considered incapacitated, unless legally emancipated.

## **2.1. (a) Demographic Characteristics**

The risk of becoming a crime victim varies as a function of demographic variables such as: gender, age, race, and socio economic class (Bachman, 1994; Bureau of Justice Statistics, 1992; FBI Uniform Crime Reports, 1992).

### **i) Gender**

With the exception of sexual assault and domestic violence, men have a higher risk of assault than women (Gelles & Straus, 1988; Hanson et al., Norris, 1992). Lifetime risk of homicide is three to four times higher for men than women (Bureau of Justice Statistics, 1992) .

### **ii) Age**

Adolescents have substantially higher rates of assault than young adults or older Americans (Bureau of Justice Statistics, 1992; Hanson et al., 1993)

Data from the National Crime Victimization Survey indicate that 12 to 13 year olds are two to three times as likely as those over 20 to become victims of personal crime each year (Whitaker & Bastian, 1991).

Data from The National Women's Study indicate that 62% of all forcible rape cases occurred when the victim was under 18 years of age (Kilpatrick et al., 1992).

### **iii) Race**

Racial and ethnic minorities have higher rates of assault than other Americans (FBI Uniform Crime Report, 1992; Hanson et al., 1993)

In 1990, African -Americans were six times more likely than white Americans to be homicide victims (FBI Uniform Crime Report, 1992). Rates of violent assault are approximately twice as high for African -and Hispanic -Americans compared to White Americans (Reiss & Roth, 1993).

### **iv) Socio Economic Class**

Violence disproportionately affects those from the lower socio economic classes (U.S. Bureau of the Census, 1991). Family income is related to rates of violence and victimization, with lower income families at a higher risk than those from the higher income brackets (Reiss & Roth, 1993). For example, in 1988, the risk of victimization was 2.5 times greater for families with the lowest incomes (under \$7,500) compared to those with the highest (\$50,000 and over) (Reiss & Roth, 1993).

Using longitudinal data from The National Women's Study, Kilpatrick et al., found that women with household incomes less than \$10,000 had odds 1.8 times greater than those with incomes of \$10,000 or more of becoming a rape or aggravated assault victim in the two year follow-up period. Poverty increased the risk of assault even after controlling for the effects of prior victimization and sensation seeking.

However, some other studies report that family income is a less important predictor of victimization than gender, age, or ethnicity (Reiss & Roth, 1993).

### **Interpreting Demographic Characteristic Data**

Some of the conflicting findings about demographic characteristics as risk factors for violent crime are attributable to methodological variations across studies. Another reason for conflicting findings is that many demographic variables are confounded. That is, they are so interrelated as to cause some difficulty in separating out their relative contributions.

Demographic variables of age, gender, and racial status all tend to be confounded with income: young people tend to be poorer than older people; women tend to have less income than men; and African-Americans tend to have less income than white Americans.

### **Repeat Victimization and the Cycle of Violence**

Until recently, there was little appreciation of the extent to which many people are victims of crime not just once, but several times during their lifetime. There was sufficient understanding of how repeated victimization increases the risk for and complexity of crime-related psychological trauma. Nor did we understand the extent to which victimization increases the risk of further victimization and/or of violent behaviour by the victim.

Several studies show that a substantial proportion of crime victims have been victimized more than once and that a history of victimization increases the risk of subsequent violent assault.

Other research suggests that the risk of developing PTSD and substance use/abuse problems is higher among repeat victims of violent assault than among those who have experienced only one violent assault (e.g. Kilpatrick et al., Breslau et al., Kilpatrick, Resnick, Saunders, Best & Epstein, 1994).

Still other evidence suggests that youth victimization history increases risk of involvement with delinquent peers and of subsequent delinquent behaviour (Ageton, 1983; Dembo et al., 1992)

Some research shows that involvement with delinquent or deviant peers increases the risk of victimization (e.g. Ageton, 1983), and that substance use also increases risk of victimization (e.g. Kilpatrick et al., 1994)

Another line of research has found that a history of child abuse and neglect increases risk of delinquent behaviour during childhood and adolescence and of being arrested for violent assault as an adult (e.g. Widom, 1989, 1994).

This new knowledge about repeat victimization and the cycle of violence has several implications for appropriate mental health counseling for crime victims; Mental health professionals should include crime prevention and substance abuse prevention in their work with victims to decrease the risk that new victimization or substance abuse problems will occur (e.g. Kilpatrick et. al., in press; Kilpatrick et al., 1994).

Mental health professionals should not assume that the crime they are treating is the only one the victim has experienced. This requires taking a careful crime victimization history. Providing effective mental health counseling to victims may well be an effective way to reduce the risk of future victimization, substance use/abuse, delinquency and violent behaviour.

### **v) Residential Location**

Where an individual lives influences one's risk of becoming a violent crime victim. Reiss and Roth (1993) report that violent crime rates increased as a function of community size. For example, the violent crime rate was 359 per 100,000 residents in cities of less than 10,000; but 2,243 per 100,000 in cities with populations over a million translates to rates seven times greater. (Reiss & Roth, 1993; p.79). Data, including non-reported crimes, from the **National Crime Victimization Survey (NCVS)** also indicate that violent crime rates are the highest in central cities, somewhat lower in suburban areas, and lowest in rural areas (Bureau of Justice Statistics, 1992). The UCR and the NCVS are better at measuring street crime than at measuring violent crimes perpetrated by acquaintances or partners.

Thus, the assumption that the increased risk of violent assault associated with residential location most likely results from stranger attacks, not necessarily from attacks by family members or other intimates, is a function of the limits of the measurement device.

## **2.2. EXPOSURE TO POTENTIAL ASSAILANTS**

No violent assault can occur unless an assailant has access to a potential victim. Someone could have every previously discussed risk factor



for violent assault and be completely safe from assault unless approached by an assailant.

A prominent theory attempting to predict risk of criminal victimization is the routine activities theory. As described by Laub (1990), the risk of victimization is related to a person's lifestyle, behaviour, and routine activities. In turn, lifestyles and routine activities are generally related to demographic characteristics (e.g. age and marital status) and other personal characteristics. If a person's lifestyle or routine activities places him or her in frequent contact with potential assailants, then they are more likely to be assaulted than if their routine activities and lifestyle do not bring them into as frequent contact with predatory individuals.

For example, young men have higher rates of assaultive behaviour than any other age-gender group (Reiss & Roth, 1993; Rosenberg & Mercy, 1991). Thus, those whose routine activities or lifestyles involve considerable contact with young men should have higher rates of victimization. Likewise, people who are married, who never leave their houses after dark, and who never take public transportation, should have limited contact with young men, and therefore have reduced risk of assault.

Although some have argued that the routine activities theory has substantial support in the empirical literature (Laub, 1990; Gottfredson, 1981), most of the crime victimization data that are used to evaluate assault risk measure stranger assaults much better than partner or acquaintance assaults. Thus, the theory is probably much more relevant to stranger assaults than to other assaults.

## **2.3.DEFINING VICTIMS OF VIOLENT CRIME**

“Victims of violent crime” can have varying meanings and limitations. In this discussion of crime victims, "victims" refers to the persons who have been directly harmed or have experienced loss due to the crime committed against them, immediate family members, including parents or guardians, siblings, spouses or common law spouses, and children of those against whom the violent crime has been committed. The reason for this inclusion of family

members within the definition of victims is because they are also harmed and experience loss due to the crime committed against their loved ones, especially if their loved one has been murdered.

Violent crime is when an offender uses intimidation or physical force resulting in the harm of another person. Examples of violent crime include, but are not limited to: homicide, manslaughter, aggravated assault and assault causing bodily harm. These are only a few types of violent crime and other violent crimes should not be excluded from the definition.

Although this explanation of "victim" is widely accepted, it is not the legal definition and not all courts recognize this definition. Some definitions of "victim" recognized in courts are limited to just the direct victim of the crime.

## **2.4. U.N.DECLARATION ON BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER. 1985**

The adoption by the United Nations General Assembly of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) is by no means the only example of United Nations activity in this field. The work of the United Nations in preventing abuse of power and violations of human rights to long-standing, and among the results have been the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on Elimination of All Forms of Discrimination against Women. The United Nations has also developed international guidelines to reduce abuses against the elderly, the handicapped and the mentally ill, and has drafted basic principles and guidelines on the reparation of victims of gross violations of human rights and humanitarian law.

### **Check Your Progress**

1. Who is a Victim?
2. What are the demographic Characteristics.
3. How do you interpret demographic Characteristics.
4. What do you know of Repeat Victimization.
5. Who is a Potential Assailant?
6. Can you define Victims of Violent Crimes?

In recent years the United Nations Security Council has worked to establish two ad hoc international criminal tribunals for the former Yugoslavia and Rwanda. On the practical level, the United Nations has sought to provide humanitarian assistance to victims of natural and man-made disasters. Its peacekeeping operations have also sought to assist victims of ethnic violence and civil strife. The United Nations efforts in the prevention of discrimination against minorities, violence against refugees and other vulnerable targets, especially migrants, women and children (including the Programme for the Elimination of the Exploitation of Child Labour) are further examples. More work needs to be done, however, to fully address the special requirements of crime victims in developing countries, countries in transition, as well as special categories of victims, such as victims of genocide, terrorism, organized crime, and other types of mass victimization. .

The work of individuals, organizations, Governments and international bodies to restore victims to their rightful place in legal systems and increase the amount and quality of assistance available to victims has not been easy. Legal systems have evolved gradually over the centuries, and proposals for reforms to benefit victims have raised concerns that they may detract from the legitimate rights of others, such as suspects and the accused persons. Furthermore, it has often proven difficult to sensitize key representatives of the criminal justice system, policy-makers, legislators and members of the community to the fact that change is needed.

There may, in fact, be areas where the interests and concerns of victims are at odds with those of others. The establishment of victim services requires resources, which might, then, not be available for other purposes. Various procedural rights, such as the right to confidentiality and protection, must be balanced with the rights of the Accused person, such as the right to confront the accuser and to prepare his or her defense. In most cases, however, there is no such conflict. Although services require resources, it should be realized that any member of a community may become a victim, and that most crimes contribute to the victimization of other community members and the deterioration of community and societal harmony.

A new framework of restorative justice, which involves the offender, the victim, and the community in creating a balanced approach to justice, is becoming increasingly popular.

## **Implementation of the United Nations Declarations of Basic Principles of Justice for Victims of Crimes and the abuse of power.**

### **The Declaration**

In the years leading up to 1985, the World Society of Victimology invested significant resources to develop a body of knowledge which created a declaration on behalf of crime victims and victims of the abuse of power. At the Fifth International Symposium on victimology held in Zagreb, Yugoslavia, a part of the symposium served as a forum to discuss the elements of the proposed draft of a declaration of principles on behalf of crime victims. Immediately following that symposium, many people from the Symposium and in the WSV went to Milan, Italy where the United Nations was holding preliminary discussions on criminal justice reforms. It was there that the formal Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was first created and subsequently accepted by the delegates. Later that year, on 29 November, the United Nations' General Assembly adopted the declaration by consensus making it a formal part of the United Nations; world wide strategy to effect change in the member countries so that victims might be "treated with compassion and respect for their dignity and that they are entitled to prompt redress for the harm that they have suffered through access to the criminal justice system, reparation, and services that will assist their recovery" (Handbook, 1998).

This Declaration is a direct descendant to, and represents an extension of, the earlier United Nations Universal Declaration of Human Rights adopted in 1948. Human rights are one of the main cornerstones of the democratic principles, which form the basis of many national constitutions, and represent a profound expression of the dignity of life and a rejection of all forms of discrimination based on race, colour or creed. This Declaration gives victims a legitimate place in the universal agenda of human rights that

here-to-fore was not articulated and which left many issues concerning the rights of victims vague and unspecified.

### **The Handbook on Justice for Victims and the Guide for Policy makers**

In the years following the adoption of the Declaration, many searched for ways to go beyond mere words and to move toward the implementation of a dynamic process that would result in direct benefits for victims that would prevent victimization, reduce their suffering and provide care for those with residual trauma. The main aim was to take the message and the technology to all parts of the globe so that all people could have access to the information needed to make a difference in their respective countries. It was thought that the establishment of regional conferences would be one of the key vehicles used to best realize these goals. However, it was soon recognized that before the information could be distributed, a comprehensive document must be written that would directly address the specific intents of the Declaration and explain how to implement the practices called for in Victimology, provided the awareness of what the problem was, now we had to move from theory to practice.

Subsequently, work began on the Handbook on Justice for Victims, which represented the distillation of the knowledge of 82 world renowned victimologists and victim service providers from 36 countries. After three years of collecting, organizing and discussing the various components of this enormous task, the final draft was approved and published by the United Nations in April 1998.

The United Nations Commission on Crime Prevention and Criminal Justice at its fifth session adopted a resolution to develop this handbook with the intent to explain how the Declaration could be used. This handbook is the direct result of that resolution. In addition, a companion Guide for Policy makers was developed to highlight programmes and policies that have already been implemented in some countries conforming to the guidance of the Declaration.

## 2.5.THE HANDBOOK ON JUSTICE FOR VICTIMS 1998

The Handbook uses the definition for "victims" as found in the Declaration: "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are violations of national criminal laws or of internationally recognized norms relating to human rights". The clear intent of this handbook was to serve as a tool to implement "victim service programmes, and for developing victim-sensitive policies, procedures and protocols for criminal justice agencies and others who come into contact with victims" (Handbook, 1998).

Special care was used in drafting the Handbook to recognize the different legal systems, support structures and cultures that exist around the world. It was written, not as a prescription for the ills that beset all victims, but more as a set of examples to be tailored, tried and tested. It recognized that in many countries, funding is not available to support the numerous recommendations made and thus alternative resourcing strategies must be developed. These programmes, and the principles which drive them, have proven to help meet the needs of victims, hasten their recovery, restore community cohesion and provide justice in both the short-term and the long-term.

### **The Handbook is made up of five sections**

Section 1 deals with the Impact of Victimization, and covers the topics of Physical and Financial Impact; Psychological Injury and Social Cost; and Secondary Victimization from the Criminal Justice System and Society.

Section 2 deals with Victim Assistance Programmes, and covers Starting a Victim Assistance Programme; Types of services to be provided; Crisis Response, Counseling and Advocacy; Victim Participation in the Justice Process; Victim Involvement in Mediation and Restorative Justice; Victim Compensation and Restitution; Public Education and Sensitization Techniques; Victim Assistance through Crime Prevention; and, Care for the Victim Assistance Professional.

Section 3 deals with the Role and Responsibility of Front Line Professionals and others to Victims, and covers the topics of Police and Victim Assistance; Prosecutors and Victim Assistance; the Judicial Role in Justice for Victims; Prisons and alternative sanctions; Schools, Universities and Institutes; Health Care Professionals; Media Professionals; Mental Health providers; Clergy, Spiritual and Informal Leaders; Landlords and Housing Entities, Employers; Embassies, Consulates and Foreign Missions; and, Protocols for Staff Victimization.

Section 4 deals with Advocacy, Policymaking and Law Reform -The Role of Civil Society and covers the topics of Raising Awareness; Policy Development; Legislation; and Funding and Financial Recovery.

Section 5 deals with Working Together at the -International Cooperation to Reduce Victimization and Assist Victims; the Role of the United Nations and its Crime Justice Programme; The Role of Non government Organizations; and, Reducing Victimization Towards a Concerted Approach.

There are also six annexures; Programme Parameters; Suggested Resources; Selected References; Key United Nations Documents on Victims of Crime and Abuse of Power; and a list of Contributors to the Handbook. All in all, there are 34 chapters with 162 total pages; in the entire document. The function of the Handbook is to eliminate the guesswork usually involved in trying something new, and thus eliminating the time it usually takes for trial and error.

## **2.6.THE GUIDE FOR POLICY MAKERS (ON IMPLEMENTATION)**

The Guide for Policy Makers on Implementation of the United Nation of Basic Principles of Justice for Victims of Crime and Abuse of Power (also published in April of 1998) is a separate, 39 page companion document to the Handbook designed for policy makers, federal ministries, administrators, and local authorities who have the formal responsibility for addressing the plight of victims. Essentially the guide defines tasks that could be pursued to achieve the goals of the Declaration. It encourages individual

governments to develop and support programmes for responding to the challenge that victims pose in society. It reminds policy makers at all levels that victims deserve respect for their dignity, their privacy and their security. It also stresses the importance of establishing partnerships within and between all agencies (governmental and non-governmental) that come in contact, either directly or indirectly, with victims and their issues. The guide helps in mapping the routes for decision makers to work together with criminal justice professionals so that ultimately necessary programmes are implemented to benefit victims who are in need. The guide is made up of three introductory sections; the Prologue, the Purpose of the Guide, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This is followed by two parts: Part A which deals with Victims of Crime; and Part B which deals with Victims of Abuse of Power. Finally, it ends with two annexes; Annex 1 deals with Selected References, and Annex 2 deals with the Key United Nations Documents on Victims of Crime and Abuse of Power (Guide, 1998).

### **What Does this mean to India?**

Implementing these Basic Principles would first, dramatically improve the quality of life for a large segment of India's crime victims. With the establishment of victim assistance programmes to deliver a range of services, victim suffering would be significantly reduced. Second, implementation would strengthen the cause of justice for all persons injured by crime. Now crime victims in India have very little access to the criminal justice process. Their role is predominately as a witness. Their plight and participation in most jurisdictions is, at best, minimal.

These Basic Principles offer the victim a long overdue partnership with the criminal justice system. A partnership that ensures that the victim has a legitimate place in the criminal justice process. Third, implementation would also enhance crime prevention efforts. This benefit is usually a surprise to most people. However, research findings have clearly shown that a large segment of the criminal population were themselves victimized, by violence when much younger and their subsequent criminal behaviour was usu-



ally an expression of anger and fear resulting from their earlier childhood victimization (Satten, et al., 1960: and Duncan, et al., 1958). The truism that has emerged within the victim assistance field is that "good victim" assistance is good crime prevention". Victims who are not treated have a greater likelihood of taking their anger and frustrations out on other persons, often repeating the same violence visited on them, and thus continuing an unending cycle of violence.

In India there are no separate laws, which provide victim compensation, restitution or victim assistance. However, the Code of Criminal Procedure of 1973 and the Probation of Offenders Act of 1958, do address the word "compensation", which is; in fact "restitution". These provisions empower the courts to require the offender to pay restitution to the victim. Yet most courts do not exercise these provisions and seem to ignore the plight of victims. The state Government of Tamil Nadu, at the encouragement of the Indian Society of Victimology, published an executive order in August of 1995, to provide a "Victim Assistance Fund for Compensation". Subsequently the Indian Society of Victimology drafted a national bill in 1996 under the able leadership of the famed jurist the Honourable V. R. Krishna Iyer.

Among the developing countries, India is a leader in taking the first steps towards implementation of the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and the Abuse of Power. However, there is still much to be done.

Some of the obvious challenges faced by India are: a population of one billion with about one third still in poverty and illiteracy. India is today contributing more people to the world population than any other country (Penberthy, 1994). Then there is the problem of child labour practices; which enslave roughly 10 million minors working as domestic servants in semi-feudal bondage (Asshi, 1998). There is the; "young menace" which across the country involves school children who resort to murder, dacoity and extortion for a variety of misguided motives. A dramatic case in point, young Charasjit Singh, a class XI student of Delhi's Army Public School, smashed

the skull of a junior schoolmate with a boulder for just insulting him. 10<sup>th</sup> standard school boy of Don Bosco School, Chennai, Stabbed his female teacher thrice in her stomach. She instantaneously died. Whether to leave the boy in jail or Bail. The High Court of Madras said he is a minor. So he was set free in the custody of his relatives. (2012). As in other countries, the majority of heinous crimes in India are being committed by the young. According to the Tata Institute of Social Science (TISS), the crime rate among the youth has gone up as much as 40% in recent years. The Indian National Crime Records Bureau (NCRB), in one of its reports stated that young people (in the 16-25 age group) are responsible for 56 percent of all crimes committed in this country (India Today, 1999). The answer for many of society's ills lies in listening to the people, especially the victims. Not passively, but actively, keeping in mind that many victims are women who have been taught by society to suffer in silence. If you want to learn from them, you must learn to listen even beyond the spoken word. Gandhiji once said, "My people are ahead of me, I must run and catch up with them, for I am, their leader" (Frontline, 1997). Of course each of these challenges has been and is today being met with enormous resources of time, effort and money, and progress is being made. But we all look for ways to hasten the solutions, which will help relieve the distress and suffering of millions of victims. How do we hasten a process that sometimes moves so slowly that it appears to be standing still? What can the Declaration of Basic Principles, or the Handbook on Justice for Victims, or the Guide for Policy Makers do to ameliorate this massive social malaise?

The strongest, most active and most productive groups in America and in most other countries where victim assistance has become a viable extension of the criminal justice system, have been ex-victims, who call themselves "survivors" and work as indefatigable volunteers for the cause of victims. They have become a mighty force for reform in this area of public policy and human concern. They have suffered, but are unwilling to remain silent and unwilling to remain idle. Like Phoolan Devi, they have used their misfortune as a "stepping stone rather than as a stumbling block". They represent a very significant resource in the implementation of this United Nations

**Declaration.** Those in power must invite those not in power to join in this effort. For without the help of the people, they can only fail. This task should only be accomplished in a true partnership with all parts of society, because it is a problem of the entire society. History has shown us that societies improve themselves by taking stock of the new realities, which confront them, and adjusting honestly and decisively. However if people find the will and power to change and nurture and create the process to implement the Basic Principles. This Process will lead the people to a better tomorrow where the conditions will be much improved for Victims of Crime.

## **HISTORY OF VICTIMOLOGY.**

The scientific study of victimology can be traced back to the 1940s and 1950s. Until then, the primary focus of research and academic analysis in the field of criminology was on criminal perpetrators and criminal acts, rather than on victims. Two criminologists, Mendelsohn and Von Hentig, began to study the other half of the offender/victim dyad: the victim. They are now considered the "fathers of the study of victimology" (Roberson, 1994).

In their efforts to understand crime, these new "victimologists" began to study the behaviours and vulnerabilities of victims, such as the resistance of rape victims and characteristics of the types of people who were victims of crime, especially murder victims.

In the course of his legal practice, Mendelsohn interviewed his clients to obtain information about the crime and the victim. He viewed the victim as one factor among many in the criminal case. His analysis of information about victims led him to theorize that victims had an "unconscious aptitude for being victimized" (Roberson, 1994).

Von Hentig studied crime and victims in the 1940s, and Steven Shaffer later published *The Criminal and His Victim*. Their analysis of murder focused on types of people who were most likely to be victims of homicide. The most likely type of victim Von Hentig identified is the "depressive types" who was seen as an easy target, careless and unsuspecting. The "greedy type" was seen as easily duped because his or her motivation for easy gain

lowers his or her natural tendency to be suspicious. The "wanton type" is particularly vulnerable to stresses that occur at a given period of time in the life cycle, such as juvenile victims. Von Hentig's last type was the "tormen-tor", the victim of attack from the target of his abuse, such as the battered woman (Roberson, 1994).

Von Hentig's work provided the foundation for analysis of victim-proneness that is still evident in the literature today. Wolfgang's research followed this lead and later theorized that "many victim-precipitated homicides were, in fact, caused by the unconscious desire of the victims to commit suicide" (Roberson, 1994).

Viewed from the perspective of criminology, victimology initially devoted much of its energy to the study of the how victims contribute -know-ingly or unknowingly -to their own victimization, and potential ways they may share responsibility with offenders for specific crimes.

The Crime Victims' Movement had its emergence and growth in the 1960s, 1970s and 1980s. This movement brought increased social and political attention to the poor treatment of crime victims by the criminal justice system and challenged the treatment of victims by the criminal justice system.

The negative effects of "victim blaming" have been a key tenet of the fight to improve the treatment of crime victims. Research into ways in which victims "contribute" to their own victimization was (and continues to be) viewed by victims and victim advocates as both unacceptable and destructive.

### **National Organisation for Victim Assistance (NOVA)**

The NOVA is a private, Non - profit organisation of Victim, and witness assistance programmes and practitioners, criminal Justice agencies and professionals, mental health professionals, researcher, former victims and survivors, and others committed to the recognition and implementation of victims rights and services. Founded in 1975 NOVA is the oldest national group

#### **Check Your Progress**

7. Examine the declaration on behalf of Crime Victims.
8. Examine the Handbook
9. Explain the Guide for Policy Makers.

of its kinds in the world wide victims Movements. NOVA's mission is to promote rights and services for victims of crimes and crisis everywhere. This is true of Best Bakery case as well.

As crime victim services and rights have expanded throughout the last two decades, practitioners and public policy-makers have looked to research to provide a more scientific foundation for service design and delivery.

More recent avenues of studies in victimology have included: how various components of the criminal justice system treat victims; the impact of victimization; and the effectiveness of certain interventions with crime victims.

Extensive qualitative and quantitative research about the nature and scope of crime victim services has been conducted and published. Studies about the effectiveness of interventions with crime victims have also been done. In addition, the debate about the scope and focus of victimology is evolving and is illustrated in the sharply contrasting topics of research that are found in a variety of victimology journals.

## **2.7. THE VICTIM IN HISTORY**

Harding (1982), Mawby and Gill (1987) relate that the right for the victim compensation was in existence even in the Babylonian law, which held on the principle of 'eye for an eye, tooth for a tooth'. The offender bought back peace by paying the victim or to his kin and in addition to this, he also paid the offender a fee for having negotiated (Harding, 1982). However, as the influence of the king and the court grew, their share of payment increased and the victim's share declined. Finally, it came to a stage where the total payment was taken by the Crown with the victim's right being replaced by a fine decided by the tribunal (Walklate, 1989). In the Middle ages, States began to be more centralized and the victim's right to compensation diminished. This era came to be known as the Golden Age of the Victim (Schafer, 1968).

## 2.8. SUMMARY

In this lesson we have come across about victims. Who is Victim in general sense of the term. Who according to common people is a victim. Who is a victim of crime who is a victim of the Circumstances. We are able to assess is a victim of Violence, war crime and war crime victims. We are also able to appreciate who is a victim - Because he belongs to one particular sex; Gender Victim - sexless person is also a victim. Some persons because they come particular region - are victims - say scheduled caste, scheduled Tribes, Delits : Backward class peoples and people live in Mountain areas -or war prone areas like Israle, Palastine and Earthquake areas like Malasiya, Japan Iraq, Eran, Egipt. We also came to Know of NCVS; NOVA etc.

## 2.9. KEYWORDS

1. Demographic variables - Age, Gender, Vacial states.
2. Repeat Victimization - People who become victims several times.
3. U.N. Declaration - Proposal of United Nations
4. Genocide - Killing indiscriminately- bombing a place  
- (Japan).
5. Torture - Inhuman acts

## 2.10. ANSWER TO CHECK YOUR PROGRESS

1. Refer Para 2.1
2. Refer Para 2.1 (a)
3. Refer Para 2.1. (a)
4. Refer Para 2.1.(a)
5. Refer Para 2.2.

(Space for Hints)

6. Refer Para 2.3
7. Refer Para 2.4
8. Refer Para 2.5.
9. Refer Para 2.6

## **2.11. MODEL QUESTIONS**

### **SHORT ANSWER QUESTIONS**

1. Who is a Victim?
2. Explain the typologies of Victim.

### **LONG ANSWER QUESTIONS**

1. Briefly describe the salient feature of UN Declaration of Crimes and Abuse of Power 1985.
2. What are the important Demographic characteristics of the victim?
3. Describe in detail the Victims of Violent Crimes.

## **UNIT II**

### **PATTERNS OF CRIME VICTIMIZATION**

#### **LESSON 3**

#### **VICTIMS OF TRADITIONAL CRIMES - FOCUS ON WOMEN VICTIMS**

#### **INTRODUCTION**

In this lesson we have given more importance to women victims. In India we are giving more importance to Gender Justice. In the past the female population was not at all considered. Only Bajaji gave importance to women. One courageous lady started "Home Rule" - a Magazine. They took part in the freedom movement. We were able to get Indira Priya Dharshini - Indira Gandhi. Only after her time - we have more laws regarding children and women.

#### **UNIT OBJECTIVE**

The Objective is to know more about women movement - to free themselves. How far law and enlightened society tried to help them. How they were given economic freedom. How they were able to attain - the freedom from the "bad culture" - which made them slaves of their Homes. We have taken up all dimensions to set it right - to free them from traditional crimes victimization.

#### **UNIT STRUCTURE**

Introduction

Unit Objective

Unit Structure



- 3.1. Dowry
- 3.2. What is sexual assault?
  - a. Women lawyers petition Supreme Court against abuse
- 3.3. Suggestion to mitigate
- 3.4. Women as victims of crime
  - a. Crimes against women in India
- 3.5. Consequences of Victimization
- 3.6. Legal and Protective measures
  - a. Adultery
  - b. Women Reservations
  - c. Right against exploitation
  - d. Directive Principles and Women
  - e. Sexual Harassment of Women in Working place.
  - f. Out raging the modesty of a women
  - g. Kidnapping and Abduction
  - h. Sexual offences against women.
  - i. Offences Relating to marriage
  - j. Cruelty by husband (for dowry)
  - k. Equal pay for men and women.
  - l. Medical Termination of Pregnancy Act (M.T.P.A)
  - m. Prevention of Immoral Traffic Act.

**3.7. Focus on Child Victims**

- a. Sexually Violent offenders Registration.**
- b. Child Sex Tourism.**
- c. What is Child Abuse?**

**3.8. Victims of Domestic Violence**

- a. Victims Character**
- b. Domestic Violence effects on Children.**
- c. Domestic Violence and the Criminal Justice System.**
- d. Police Response.**
- e. Prosecution and the courts**
- f. Orders of Protection**
- g. Victim of Validation**
- h. Developing a safety plan.**

**3.9. Child Labour**

**3.10. Caste Atrocities.**

**3.11. Communal Riots**

**3.12. Genocide**

**3.13. International Prosecution of Gemocide.**

**3.14. Nuremberg Trials.**

**3.15. Summary**

**3.16. Keywords**

**3.17. Answer to check your Progress**

**3.18. Model Questions.**

### 3.1. DOWRY

The statistical trend for crime in India shows that, victims of traditional crimes such as theft, robbery, murder are more in men than in women. Patterns of crimes against women have increased over the years. Age old crimes such as dowry and bride burning still exist practically in all communities. Dowry has been part of the Hindu social life seeping from there to other communities. In “dowry” difficulties arise because of our failure to distinguish between what is normal and what is not. All over the world parents of the bride the bridegroom give presents to the couples. Their relatives and friends also do. All this is done willingly.

The practice of a woman giving a “dowry” or gift to a man at the time of “marriage” is said to have had its origins in the system of *streedhan* (woman’s share of parental wealth given to her at the time of her marriage). As a woman has no right to inherit a share of at the ancestral property, ‘*streedhan*’ was seen as a way by which the family ensured that she has access to some of its wealth.

What began as a gift of land to a woman as her inheritance in an essentially agricultural economy today has degenerated into gifts of gold, clothes, consumer durables and large sums of cash which has sometimes entailed the impoverishment and heavy indebtedness of poor families. The Govt. of India Passed Dowry Prohibition Act in the year 1961. It was happily violated

Initially, women's groups protested individual cases of dowry deaths. A national campaign focused on humiliating and socially boycotting the families in these cases. The campaign also demanded that mysterious deaths be presumed to be murder until investigated and proved otherwise by the police. The demand for special cells of women police officers to hear investigations of dowry murders led to an amendment of the outdated Dowry Prohibition Act of 1961 which was later further amended so that all *streedhan* gifts (both movable and immovable) had to be registered in the wife's name as the time of the marriage.

Unfortunately in India basic attitudes to female life have remained unchanged and the dowry is seen as a bribe to the son -in law to keep the daughter who after a certain age is totally unwanted in her parents home. Families often know that they are virtually signing a death warrant when they give their daughter in marriage, and yet they do so.

The Dowry Prohibition Act was enacted in 1961 and amended in the year 1984 and again in 1986. The Dowry Prohibition Act 1961 applies to persons of all communities residing in India. The definition of dowry does not include wedding presents by parents, relatives, friends and close acquaintances at or about the time of marriage. We will see Elaborately later.

Domestic Violence, by itself with or without demand for dowry is yet another crime that has only recently been recognized as a form of abuse. Domestic violence is a simple phrase but it encompasses a horrifying list of abusive behaviours both physical and psychological. The list is endless. There is seemingly no end to the horrors some human beings can inflict on those whom this society calls their loved ones. One in every five married women in India experienced domestic violence as per a study that interviewed 90,000 women (A study by the Health Ministry, Govt of India 2000).

Another pattern of Victimization that most women are subjected to is rape and sexual harassment.

### **3.2.WHAT IS SEXUAL ASSAULT?**

Sexual assault is any type of sexual activity that you do not want to agree to. It ranges from inappropriate touching to penetration or intercourse. It also can be verbal, visual audio or any other form which forces a person to participate in unwanted sexual contact or attention. Sexual assault includes rape and attempted rape, child molestation, voyeurism, exhibitionism, incest and sexual harassment. It can happen in different situations. Such as: “date rape”, domestic or intimate partner violence or by a stranger. All forms of sexual assault are crimes.

Sexual assault is an act of power and control and is not related to sexual urge. The offender who often is an intimate partner, acquaintance or family member can plan the assault ahead of time. Nearly 6 out of 10 rape of sexual assault incidents are reported by victims to have occurred in their own home or at the home of a friend, relative or neighbour (U.S. Departments of justice). No matter who attacks you sexual assaults is a crime.

Sometimes the offenders is able to take advantage of the victim because the victim is under the influence of alcohol or drugs. Rohypnol and GHB (Gamma Hydroxybutyrate) are commonly referred to as the "date rape" drugs since they have been given to victims without their knowledge they make the victim unable to resist assault and also cause an amnesia-like affect so the victims uncertainly about what happened. Even if you were drinking alcohol or taking drugs at the time of the attack sexual assault is a crime.

Unfortunately rape or sexual assault is the violent crime least often reported to law enforcement. Only 16% of rapes are ever reported to the police. In a survey of victims who did not report rape or attempted rape to the police, victims gave the following reasons for not making a report; 43% through nothing could be done; 27% thought it was a private matter; 12% were afraid of police response and 12% thought it was not important enough. Remember sexual assault is against the law. You have the right to report this crime to the police, and to be treated fairly.

The increase in sexual harassment gender abuse (eve teasing) has led to the enactment of various special acts and severe punishment. Saria Shaw's case is a good Example.

**Child abuse** is another age-old crime against children that has only recently come to light. Children have been silent victims of incest. and abuse by elders like uncles and cousins at very young ages. Even her own father. The French ambassador to India is a better example. His own wife gave a complaint. Only lately do parents report such cases and that too only when it happens with strangers.

**Trafficking in human beings** is an abhorrent and increasingly worrying phenomenon. It is of a structural rather than of an episodic nature affecting a few individuals in that it has extensive implications on the social, economic and organizational fabric of our societies. The phenomenon is facilitated by globalization and by modern technologies. Trafficking in human beings not only involves sexual exploitation but also labour exploitation in conditions akin to slavery. The victims are subjected to violence, rape, battering and extreme cruelty as well as other types of pressure and coercion.

## **FOCUS ON WOMEN**

### **Violence against women**

Violence against women was one of the oldest and the most crucial mechanisms by which women, were forced into subordinate position in India. It cut across all socio economic strata, religious and ideological groups, including the less educated as well as illiterate mind sets. What is needed is a will to get justice in cases of crime against women and only a multi prong programme, meticulously implemented, would be able to make a dent on this cultural cancer. Crimes against women and children needs special handling. A women's real victimization took place during investigations which could prove more traumatic than crime itself. Laws have to be made more stringent and followed by certainty of punishment. Laws alone would not change the lot of women unless there is social awareness of the wrong that is being perpetrated on women. First of all there should be a revolution of consciousness in the minds of women in the way they think about themselves. Women must realize that gender violence is inconsistent with the basic human rights of women. Instead of accepting their destine silently they must stand up against their oppressors and fight resolutely for their rights. National Commission of Women has made many useful recommendations and the Government should look into them and implement. Police should create linkages with Women Welfare Committees which would enable such organizations to attend to the cases of atrocities against women. The Police should train experts to attend to crimes against women.

### **3.2.a.Women lawyers petition Supreme Court against abuse**

**Seek Protection Against Harassment in Courts After Male Lawyer Challenges Conviction. [Times News Network (1-8-12)]**

New Delhi : Fifteen years after it laid down guidelines to protect women against sexual harassment at workplace, women advocates on Tuesday appealed to the Supreme Court to examine implementing them at their workplace - the court premises.

Pent-up frustration over the years against absence of any mechanism for their protection at workplace made the women lawyers seek intervention in an appeal filed by an advocate challenging his conviction by the Delhi High Court on contempt of court charges for allegedly behaving indecently and assaulting a lady colleague in a courtroom in January.

When a bench of Justice T S Thakur and Justice Gyan Sudha Mishra adjourned hearing on the appeal to permit the contemnor to file reply to the victim's affidavit, senior advocate Indu Malhotra requested the bench to examine extending the protection of 1997 judgment in Vishaka Case to women lawyers, who are proposing to file an application in this regard.

In Vishaka Judgment, the apex court had said: "Each incident of sexual harassment of working women results in violation of fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty' .... One of the logical consequences of such incident is also the violation of the victim's fundamental rights under Article 19(1) (g) to practice any profession or to carry on any occupation, trade or business."

The court had laid down guidelines and norms for observance at all workplaces and institutions saying it would stay in force till enactment of legislation. The guidelines are still in force as no legislation till date had been enacted by successive governments at the centre.

The high court had taken serious note of the January 13 incident and sought an explanation from the advocate as to why he physically abused the

woman lawyer. It even suggested recording of statement by Joint Registrar in whose court the incident happened.

But the contemnor categorically stated that there was no need of it as he was admitting the incident as reported by the lady lawyer. This made the HC convict him for contempt of court, sentence him to seven-day imprisonment and order debarment from practice in Delhi for three months.

The contemnor appealed in the apex court saying he was condemned without a hearing in breach of principles of natural justice. "The High Court order was not based on any inquiry. The appellant was denied the opportunity of a fair trial as his unconditional apology was interpreted as admission of guilt," the contemnor said.

The Victim in her affidavit told the SC that "the contemnor himself did not allow recording of statements because he was afraid that the truth would be recorded in black and white.

It is by now widely recognized that women as a social group have much lesser opportunities than men and that society is structured in such a way that the majority of women do suffer from inherent disadvantages. All women share a common experience of oppression and subordination which is based on the sexual division of labour and the origination of sexuality and procreation. The former allots to women the bulk of the tasks associated with the substance of the domestic unit while excluding from them the enjoyment of economic and social power the latter permits the appropriation of women's -geherative and sexual capacities and, limits women's autonomy and freedom of action thus gender equity is not just a women issue. It involves the relationship of men and women about who exercises power as equal architect participants agents and decision makes in all aspects of development. We have to create a strong public opinion desirous of change and also political commitment.

There are so many problems that women have to face although the constitution guarantees to all citizens Justice, Liberty, Equality. Fraternity, without any discrimination. Even after 66 years of independence women con-



tinue to be treated as the single largest group of backward citizen in India. All these call for urgent remedial measures.

In response to the demands of women, women organization and social activist Parliament passed the “**NATIONAL COMMISSION WOMEN ACT**” in August 1990. The Commission has taken up many studies on Women's issues. The Commission is given powers of civil court trying a suit.

The Commission has initiated comprehensive measures on legal safeguard to examine the existing legal position. Correct lacuna in laws and suggest remedial measures. The Commission is to review the justice delivery system for easy access to women and also to examine the problems of women in custody. This is just the beginning. Our ultimate aim is to have a well defined national policy on women an effective uniform civil code of justice to fulfill the objective and guarantees provided the Constitution of India and make women equal partners in society.

We are at the step of 21<sup>st</sup> Century an area of gender neutrality it has become imperative for every women to know their equality in their society and the Nation should stand against violence towards women. We are no more weaker sex but equal sex.

Women's access to education, health, employment, political spaces still remain distant goals in many nations of the world. One of the most serious implements to women's development is the phenomenon of continuing and increasing violence highest them. Violence against women is one of the most significant factors responsible for the phenomenon of marginalization of women in the development process.

Gender violence manifests itself in various forms -female foeticide and infanticide sexual abuse, molestation, sexual harassment at work and on the streets, marital rape, domestic violent in the form of wife assault and women battering. Thus, women may experienced violence either once in one of her life -cycle phases or be continually exposed to multiple instances of violence at various points in time.

But in spite of the initiatives taken during the last few decades of planning process in Indian, women still face some limitations and apparent handicaps and constraints to the lack of education, health, nutrition, information transpiration and other factors. There is still discrimination against women and they have yet to be integrated in the development process of the country.

Historically infanticide has been in existence since a long time. Girl infants have been known to be killed by being deprived of major nourishment; or even by rubbing poison on the mothers breasts. The marriage of girls and the burden of dowry were the main factors responsibilities for these types of crimes. Even through the government of India is officially banning sex determination tests feticides is on the rise not only among poor families but among affluent families as well (National Commission of Women) country wide studies have been initiated TO REVIEW THE PROBLEM OF INFANTICIDE AND THE Tamil Nadu Government introduced a 'Cradle baby schemes' under which parents who do not want a girl can leave the infant in government homes or hospitals.

### **Eve Term**

Women working late have nightmares to narrate. Now, the city police want to let them put it all down in black and white.

Following complaints from women IT professionals on the Pallavaram - Thoraipakkam Radial Road, the police have put up a special complaint box. Similar boxes exclusively for women professionals will soon dot not IT Corridor in a couple of weeks. Women can deposit their complaints and information about people who harass them, without revealing their identity.

Deputy commissioner of Police (Adyar) R Sudhakar told TOI that they held meetings with representatives of IT firms, who welcomed the police initiative. In the first phase, a complaint box has been set up near the entrance of Chennai Complex -I, a building which houses several IT Firms on the Pallavaram - Thoraipakkam road. Complainants can write down the problems right from harassment at workplace to public nuisance, he said.

“The complaints can be anything which the woman thinks is offensive and needs police assistance for. It could be about men making cat calls, harassment, sexual assault, chain snatching or any form of physical abuse. Setting up such boxes will help women who feel awkward about visiting a police station to lodge a complaint. Since they can remain anonymous and come forward to complain,” said the police officer.

Assistant commissioner of Police (Thuraiyapakkam) Mohammad Aslam said women could also post complaints against drivers who misbehave. “In case the woman travels alone, she could note down the vehicle number and mention it in the complaint. The complaints will be taken to the nearby police station where they will be sorted and looked into. If the complainant so prefers, police will contact her.

“We are confident that this “box formula” will be a hit among working women. We will intensify patrolling in areas from where the complaints come,” said Aslam.

In recent years south Chennai in particular has recorded a rise in cases of women reporting harassment on the streets.

Lack, of education, mounting consumerism combined with the demand for dowry, inadequate knowledge and facilities for family planning and the greed of doctors and greedy mothers have compounded the crises of infanticide and feticide.

Besides the practice of dowry originated based on the love and affection of parents for their daughter and genuine concern for her well being in her in laws home. Over the years it has become mandatory due to magnetization of the society development of consumer culture through free market mechanisms, colonial educational system and organized sector of the economy. Dowry tends to lower the status of the women. Her identity as an individual is judged by the material goods that accompany her and she is valued based on the money that she brings, (Mayuri 1999).

### 3.3. SUGGESTIONS TO MITIGATE THE PROBLEM OF VIOLENCE AGAINST WOMEN

The problem of violence against women is an intricate one and it requires a constant review and continued measures need to be taken. An effective solution is possible only if the problem is understood and analyzed from multi discipline angles involving social scientists, national planners and the criminal justice system. One of the possible ways to reduce the crime against women in India society and to identify familial, social, economic and physiological causes leading to crimes violence's. It is also vital to recognize the role of the media in shaping social attitudes. Portrayal of public opinion. Responsible media portrayal of women's lives and minimizing negative, stereotypic imagery are essential steps in achieving this goal. Suitable formulation and implementation of strategies, legislations and sensation of machineries of effectively deal with the problem of violence against women, which requires drastic changes in social attitudes / values.

Education is the key to raising the health status of population. Research studies have shown that women's education positively influenced health of the family as a whole. An educated women is more likely to share family decisions, control over resources, decision about family size etc. So there is a need for changing the perspectives of our society and our planners to look at the lives, of lives of women, from birth to old age, as a holistic process which requires care and nurturing all through. Too often especially in rural areas females eat last and least. This neglect of health needs of women leads to serious problems and to further undermining their position and their capacities.

Students, teachers and all those working in the political religious spheres should join hands and raise their voice against injustice to women. With the emergence of a section of people who believe in the individuality and social status of women, the dowry system is bound to disappear. Our young men and women should be in the forefront.

### **3.4. WOMEN AS VICTIMS OF CRIME CAUSES, CONSEQUENCES AND PREVENTION**

The status of women. Gender differences and basis perceived and practiced against women all over the world places them in vulnerable position, making them susceptible to all forms of victimization in their homes and outside homes. Women represent half of the world's population and perform nearly 66 percent of all working hours but receive only one tenth of the income generated and own less than 1 percent of the property. Of all the deprived groups in the world today, women seem to have suffered the most throughout history. Racial, ethnic and religious discrimination has produced numerous victims but women, members of a majority group, have suffered even more than members of those minority groups.

Governments and international organizations have begun to evermore actively into this hitherto neglected subject during the past three decades. The United Nations itself called repeatedly for greater progress in the protection and enhancement of the rights of women but with limited success, in spite of documents such as the convention of elimination of all forms of discrimination against women (1979) and the earliest convention on the political rights of women (1953).

#### **3.4.a. Crimes against women in India**

Despite the fact that the constitution of India and other legislation, women continue to be victims of various crimes such as domestic violence, family violence, violence, community and at the work places. Although women may be victims of many of the crimes like other sections of population. The crimes in which only women are the victims and which is directed specifically against women are designed as 'crimes against women. Crimes against women in India could be broadly classified under two categories.

#### **I. Crimes identified under Indian Penal Code.**

##### **i) Rape (Sec 376)**

- ii) Kidnapping and abduction. (Sec 363 -376)
- iii) Dowry deaths or their attempts (Sec 302/ 304B)
- iv) Torture both mental and physical (Sec 498.A)
- v) Molestation (Sec 354)
- vi) Sexual Harassment (Sec 509)
- vii) Importation of girls up to 21 years of age (Sec 366 D)

## **II. Crimes identified under the special laws**

Reprehensively social practices such as commission of sati, demand for dowry, trafficking of women for immoral purposes are identified as offences punishable under the following special social enactments to safeguard women and their interest specifically.

They are :

- i) Commission of Sati (Prevention) Act, 1987.
- ii) Dowry Prohibition Act 1961.
- iii) Immoral Traffic Prevention Act, 1956.
- iv) Indecent Representation of women (Prohibition) Act, 1986.

## **Casual factors of crimes against women**

Female victimization should be viewed in a socio economic legal and political context. There are many ways to define violence for example it may be constructed in terms of physical force, legal status of the act subjective intention of the offender or the effects on the victims.

Female victimization, crime and physical force against women throughout time and across cultures are not naturally occurring, discrete phenomenon, free of moral substance. The use of physical force by a man against a woman may be seen as necessary discipline, proof of manhood, legal corrections, a heinous sin or a serious crime.

### **Check Your Progress**

1. What is sexual Assault?
2. Write shortly about the petition of the women lawyers in Supreme Court.
3. What are the suggestion to mitigate the Problem of Violence against Women?
4. Eve Term - Explain.

Thus the issue of victimization of women must be viewed in the context of the social definitions and redefinition of crime through the legal and political and historical change. The inequalities between women and men that lead to coercion and violence also, prompt women into definition certain conduct as victimization, identifying it as a legal and political issue and striving for its abolition. Women had resistance to victimization in the past and are increasingly engaged in collective demands for redress around the world.

The victimization of women assumes forms related to the division of labor based gender. Many aspects of women's work and socially prescribed gender rules promote gender specific victimization. It is not by chance that females, in particular are the victims of sexual violence and coercion. There are underlying social, economic and cultural reasons for this.

### **3.5.CONSEQUENCES OF VICTIMIZATION**

At the time of the crime or upon discovering that a crime has occurred victims are likely to experience a number of physical relations to the event. These may include an increase in the adrenalin in the body, increased heart rate, hyperventilation, shaking, tears numbness, a feeling of being frozen or experiencing events in slow motion, dryness of the mouth enhancement of particular senses such as smell and fight or flight responses. It is common for people to lose control over their bowel movements. Some of these physical reactions may not occur immediately but after the danger has passed. They may reoccur at a later stage when the memory of the crime returns.

After the crime, victims may suffer a range of physical effects including insomnia, appetite disturbance, headaches, muscle tension nausea and decreased libido. Such reactions may persists for some time after the crime has occurred.

Physical injuries may be permanent effect of crime and there is evidence that this has a negative effect on long -term psychological recovery since the physical scars serve as a constant remainders of the crime. Cultural gender and occupational factors may affect the individuals reaction to permanent scaring or disability as well the reaction of others.

Aruna Ramachandra Shanbang a beautiful and dutiful Nurse was subjected to brutal Rape. She was under coma for many years. Her parents petitioned to the supreme court to allow her to have a natural death Aruna Ramachandra Shanbang - vs- Union of India of India 2011 (2) Supreme 481.

Research shows that the shock waves from victimization touch not only the victim but also the victims immediate family and next of kin, neighbours and acquaintances. This holds true for the emotional as well as the financial consequence and the effects as well as the financial consequence and the effect can endure for years or even for a life time. In the case of genocide, child abuse exposure to violence and abuse of power the effect can be passed on from one generation to the next.

### **3.6.LEGAL AND PRODUCTIVE MEASURES**

#### **3.6. (a) Adultery**

In Yousuf Abdul Aziz vs State of Bombay., The validity of Section 497, Indian Penal Code, which punishes only the male counterpart in the offence of adultery and exempts the women from punishment was challenged as violative of Art 14 and 15(1) of the Constitution. The petitioner contended that even though the women may be equally guilty as an abetter, only the man was punished, which violates the right to equality on the ground of sex. The supreme Court upheld the validity of the provision on the ground that the classification was not based on the ground of sex alone. The Court obviously relied upon the mandate of Article 15 (3) to uphold this provision.

Similarly in Sowmitri Vishnu vs Union of India the petitioner challenged the validity of Section 497, Indian Penal Code on the ground that it violates Articles 14 and 21, because this provision recognises only the husband of the adulteress as the aggrieved party and not the wife of the adulterer. It was contended that Section 497 is a flagrant instance of 'gender discrimination' and 'male chauvinism' The Supreme Court held that the law does not violate either Art 14 or 15, on the ground that the offence will be



committed only by a man. The supreme Court obviously followed the ratio of *Yousuf Abdul Aziz vs State of Bombay*, as declared by a Constitutional Bench.

In *Ravathi vs Union of India* the Supreme court held that Section 198(2) of Criminal Procedure Code which gives the husband of adulteress the right to prosecute the adulterer but does not give the wife of the adulterer the similar right, is not discriminatory following the aforementioned judgement.

In *Air India vs Nargesh Mirza*, The supreme court struck down the Air India Regulations relating to retirement and pregnancy bar on the services of Air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. The impugned Regulation 46 provided that an air hostess would retire from the service of corporation upon attaining the age of 35 years or on marriage, if it took place within 4 years of service or on first pregnancy, whichever occurred earlier. Under Rule 47, the Managing Director was vested with absolute discretion to extend the age of retirement prescribed at 45 years. Both these regulations were struck down as violative of Article 14 which prohibits unreasonableness and arbitrariness.

### **3.6.(b) Women Reservations**

Provisions providing for reservation of seats for women in local bodies or in educational institutions are valid,. The Supreme Court has recently held in the case of *Govt. of A.P. vs P.B.Vijay Kumar* that the reservation to an extent of 30% made in the State services by Andhra Pradesh Government to women candidates is valid. The Division bench of the Supreme Court emphatically declared that the power conferred upon the State by Article 15(3) is wide enough to cover the entire range of State activity including employment under the state. Thus making special provisions for women in respect of employment or posts under the State is an integral part of Article 15 (3). This power conferred under Article 15 (3), is not whittled down in any manner by Article 16. In *Union of India vs. K.P.*

Prabhakaran the Supreme Court upheld the decision of the Railway ministration to reserve the posts of Enquiry cum Reservation Clerks in Reservation offices in metropolitan cities of Madras, Bombay, Calcutta and Delhi exclusively for women and the further decision that the Reservation Offices in the said metropolitan cities should constitute a seniority unit separate from the rest of the cadre of Enquiry-cum-Reservation clerks. The court while coming to the above conclusion relied upon the decision of Govt. of A.P. *Us P.B. Vijay Kumar* wherein it was stated that since Articles 15(1) and 15(3) go together, the protection of Articles 15(3) would be applicable to employment under the State falling under Articles 16(1) and (2) of the Constitution.

### **Women Reservations in Election to Local Bodies**

The 73<sup>rd</sup> and 74<sup>th</sup> Amendments to the Indian Constitution effected in 1992 provide for reservation of seats to the women in Elections to the Panchayat and the Municipalities. Perhaps, this is the first attempt by the Parliament to provide reservation for woman in legislatures. According to Article 243D of the Constitution of India, not less than one third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for woman. Such seats may be allotted by rotation to different constituencies in a Panchayat. Not less than one third of total number of offices the Chairpersons in the Panchayat at each level shall be reserved for women.

According to Article 243T of the Constitution of India which was added by the Constitution (74<sup>th</sup> Amendment) Act, 1992 makes similar provisions for reservation of seats to women in the direct elections to every Municipality. Therefore there is a successful reservation of 33% seats for woman in local bodies which acquires poignant importance. It is well documented that the woman of India made a distinguished contribution to the country in all spheres of life therefore there is nothing unreasonable or unconstitutional in making reservation for woman in legislatures. It is important to remember that the Article 15 (3) of the Constitution of India empowers the States to make special provisions for woman and children.

The Parliament introduced the Constitution 81st Amendment Bill seeking to reserve one third of seats in Lok Sabha and State Assembly for woman in the month of September, 1996. The Bill has been referred to a joint committee of Parliament and is yet to be passed. In away, the move is only an extension of the 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendments, under which a similar quota has been provided for woman in the elected bodies at various levels in the Panchayat Raj and Nagar Palika systems and as such represents a big step forward in empowering the women to play their rightful part in democratic government and in the political process at the decision making level. This measure is towards correcting the gender injustice.

### **3.6.(c) Right against exploitation**

Art 23 of the Constitution specifically prohibits traffic in human beings. In this context traffic in human beings includes “**Devadasi system**” Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing human beings for a price just like vegetables. On the strength of Article 23(1) of the Constitution, the legislature has passed the Suppression of Immoral Traffic Act, 1956 (now renamed as The Immoral Traffic (Prevention) Act, 1956] which aims at abolishing the practice of prostitution and other forms of trafficking. This is an Act made. In pursuance of the International convention signed at New York on the 9<sup>th</sup> day of May, 1950 for the prevention of immoral traffic. Recently the Andhra Pradesh Legislature has enacted the Devadasis (Prohibition of Dedication) Act, 1988 to prohibit the practice of dedicating women as Devadasis to Hindu deities, idols and temples etc., which invariably results in evils like prostitution.

### **3.6.(d).Directives Principles (Women)**

The Directive Principles of State Policy contained in Part IV of the Constitution incorporate many directives to the State to improve the status of women and for their protection.

Article 39(a) directs the State to direct its policy towards securing that the citizen, men and women, equally have the right to an adequate means of livelihood.

Article 39(d) directs the State to secure equal pay for equal work for both men and women. The State has enacted the Equal Remuneration Act, 1976 to give effect to this Directive Principle.

Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women.

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has tried to implement this directive by enacting the Maternity Benefit Act, 1961.

Article 44 directs the State to secure for the citizens a uniform civil code through out the territory of India. This particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce Uniform Civil Code in India, the judiciary has recognised the necessity of the uniformity in application of civil laws like law of marriage, succession, adoption and maintenance etc., in the case of *Sarala Mudgal Vs. Union of India* and other cases.

Apart from these specific provisions all the other provisions of the Constitution are equally applicable to the men and women. This clearly establishes the intention of the framers of the Constitution to improve the social, economic, educational and political status of the women so that they can be treated with men on equal terms.

The Supreme Court has recently dealt with the validity of the Chotanagpur Tenancy Act, 1908 of Bihar which denied the right to succession to Scheduled Tribes woman as violative of right to livelihood under Article 21 of the Constitution. The Majority Judgement however upheld the validity of the legislation on the ground that such enactment was in accordance with the custom of inheritance/succession of the Scheduled Tribes. However the dissenting judgement was delivered by Justice K.Rama Swamy who felt that the law made a gender based discrimination and that it violated Articles 15, 16 and 21 of 'The Constitution of India'. The Majority Judgement does

not appear to be in consonance With the right equality enshrined in the Constitution. During the course of his dissenting opinion Justice K. Rama Swamy had an occasion to refer various International Declarations and Convention; along -with the relevant provisions of the Indian Constitution as regards the gender discrimination in India. The Learned Judged observed:

“Legislative and executive actions must be conformable to, and for effectuation of the fundamental rights guaranteed in Part III and the directive principles enshrined in Part IV and the Preamble of the Constitution which constitute the conscience of the Constitution. Covenants of the United Nations add impetus and urgency to eliminate gender-based obstacles and discrimination. Legislative action should be. devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order law is an instrument of social change as well as the defender of social change. Article 2(e) of CEDAW (The Vienna Convention on the Elimination of all forms of Discrimination Against Women which was ratified by the UNO on 18.12-1979 and which was ratified by the Government of India on 19-6-1993) enjoins this Court to breathe life into the day bones of the Constitution, international conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including” empowerment of economic, social and cultural rights”.

These remarks made by the learned Judge highlight the plight of the Indian Women and also the necessity of the State actipn that should be taken to rectify the historical inequity that discriminated agamst the women. .

### **Right of Women to economic development**

Recently the Supreme Court has highlighted the right of the women in India to eliminate gender based discrimination particularly - in respect of property so as to attain economic empowerment. The Court, while referring to the Vienna Declaration on the elimination of all forms of discrimination against women (CEDAW) which was ratified by the United Nations Organisation on 18-12-1979 and by the Government of India on 8-8-1993 elaborately discussed the principles of equality of rights and respect of women

dignity. The necessary implication of the observations of the supreme Court in the instant case which dealt with the right of Hindu females to execute a will in respect of the property acquired or possessed by her, under Section 14 of the Hindu Succession Act, 1956 is that the right of women to eliminate all kinds of gender based discrimination particularly in respect of property is an implicitly right forming part of Articles 14, 15 & 21 of the Constitution of India.

### 3.6.(e) Sexual Harassment of Women

One of the evils of the modern society is the to sexual harassment caused to the women particularly the working women by their male counterpart and other members of the society. There is no law in India which is adequate to combat the evil of the sexual harassment. In a Public Interest Litigation (PIL) filed before the Supreme Court recently, the court has emphasised the need for an effective legislation in India to curb sexual harassment of working women. In **Vishaka vs State of Rajasthan** Division Bench of Supreme Court speaking through Chief Justice J.S. Verma (as he then was) laid down number of guidelines to remedy the legislative vacuum. The court has defined, having regard to the definition of "Women Rights" in Section 2(d) of the **Protection of Human Rights Act, 1993**, "sexual harassment" as including any unwelcome sexually determined behaviour (whether directly or by implication) like physical contact and advances, a demand or request for sexual favours, sexually-coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

In the instant case Supreme Court referred to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and also the resultant violation of gender equality under Article 14 & 15 and right to life to personal liberty of women under Article 21 of the Constitution. As a result of this judgment any women employee who is subjected to sexual harassment of any kind can take recourse to initiating criminal proceedings, disciplinary action and also seek compensation from the guilty employer and other persons responsible for the harassment.

The Supreme Court has demonstrated great judicial activism while coming to rescue of the working women even at the cost of resorting to judicial activism under Article 141 of the Constitution. Act is done without the consent of the woman, the offender may attract even the life imprisonment under Section 314 of the Court. Similarly under Section 315 any Act done with the intention of preventing a child -being born alive or to cause it to die after the birth, the offender is liable to maximum punishment of ten years. However if the Act is done in good faith for the purpose of saving the life of the mother it is not punishable.

Under Section 316, an offender causing death of a quick unborn child by an act amounting to culpable homicide is punished. This Section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening and where death is caused after the quickening and before the birth of the child. This is made a specific offence on the principle that a foetus gets life after twelve weeks of conception.

The Parliament has passed The Medical Termination of Pregnancy Act, 1971 and the Pre-natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994 to deal with unlawful miscarriages and also the infanticide as well as foeticide. These two enactments provides for the termination of pregnancy by registered medical practitioner where its continuance would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health or where there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. The latter Act is a result of the protest against the misuse of sex determination tests to ascertain the gender of a child in the early stages of pregnancy which invariably resulted in the female foeticide. The detailed provisions and salient features of these statutes are discussed elsewhere in this work.

### **3.6.(f) Outraging the modesty of a woman**

Section 354 of the Indian Penal Code punishes an assault or criminal force on woman with intention to outrage her modesty. "Modesty" in

relation to woman is defined in shorter Oxford English Dictionary as decorous in manner and conduct; not forward or lewd; shame fast. It is the quality of being modest free from undue familiarity, indecency, or lewdness. Outraging means an act of wanton violation, any gross violation of law or decency, anything that outrages the feelings, passionate or violate behavior or language, fury or insolence, to subject to grievous violence or indignity, to anger or offend, to make resentful, shock, to offend against right, decency, feeling etc., grossly or shamelessly.

Whoever assaults or uses criminal force on any woman, intending to outrage or with such knowledge is punishable with imprisonment upto two years. The sense of modesty varies from woman to woman depending on the status, cultural background and other factors surrounding the woman. The test of the outrage of modesty is whether a reasonable man will think that the act of the offender is intended to outrage the modesty of a woman. Thus in an English case *R vs Court*, the House of Lords held that smacking the buttocks of a woman even due to a weakness called "buttock fetish" amounts to outraging the modesty of a woman. Even gestures may amount to an assault when they are made, with the intention or knowledge of outraging the modesty of a woman. In *State of Kerala vs Hay*:- where the accused beckoned", the prosecutrix by winking his eyes in public and caught hold of her arm, the court held that he was guilty of outraging her modesty. It may also be recalled that a former Director-General of Police has been held to be guilty of this offence, against a woman IAS officer by the lower court.

The Supreme Court has observed that in the case of prosecuting the offence of outraging the modesty of a woman, normally the testimony of the victim should be accepted and that such testimony should inspire the confidence of the court even in the absence of any corroboration

### **3.6.(g) Kidnapping and Abduction**

Kidnapping is an offence dealt with by Sections 359 to 374 of the Indian Penal Code. It is of two types; kidnapping from India and kidnapping from lawful guardianship. Kidnapping from India means conveying any



person beyond the limits of India without his consent or of some person legally authorised to consent on his behalf (Section 360).

Kidnapping from lawful guardianship means taking or enticing any minor under sixteen years of age if a male or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian. (Section 361)

Ingredients of the offence :—The Ingredients of the offence of kidnapping are four in number:-

- (1) taking or enticing away a minor or a person of unsound mind.
- (2) such minor must be under sixteen years of age, if a male, or under eighteen years of age, if a female
- (3) the taking or enticing must be out of the keeping of the lawful guardian of such person.
- (4) such taking or enticing must be without the consent of such guardian.

### **Abduction**

Section 362 defines abduction as compelling by force or inducing by any deceitful means any person, to from any place. Force or fraud is essential for the offence of abduction. The offence of abduction is a continuing offence.

**Kidnapping**, Abducting or inducing woman to compel her marriage etc., According to section 366 kidnapping or abducting any woman with the intension of compelling her to marry any person against her wheel, or to force or seduce her to illicit intercourse is punishable with a maximum imprisonment of ten years. Therefore sheltering girls to seduce them to illicit, intercourse! and forcefully marry a girl abducted under a trible; custom would amount to offences under Sections 361 and 362.

**Procuration of Minor girl :-** Section 366A of the Indian Penal Code punishes the inducement of any minor girl under age of 18 years for the purpose of forcing her or seducing to illicit intercourse with another person which is punishable with a maximum imprisonment of ten years. An offence under this section is one of the inducement with a particular object and the word “seduced” in this section is used in the ordinary sense of enticing or tempting, irrespective of whether the minor girl has been previously, compelled or has submitted to illicit intercourse.

**Importation of girl from foreign country :—**Section 366B deals with an offence to import into India from any country outside India, girls below the age of 21 years for the purpose of prostitution. This section makes it an offence,

(1) to import into India from any country outside India a girl under the age of 21 years with the intent or knowledge that she will be, forced or seduced to illicit intercourse with another person.

(2) to import into India from State of J & K with the knowledge or intention.

**Selling minor for purposes of prostitution etc., :—**

According to Section 372 any person selling, hiring or disposing of any person under age. of 18 years whether males or females for purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, is liable to be punished with a maximum imprisonment of ten years. This section applies to males or females under age of 18 years. Similarly it applies to a married or unmarried female also. The inhuman practice of dedication minors to the service of a temple as Dasis or Jogins with the knowledge that they will be used for the purpose of prostitution comes within the meaning of this section.

**Buying minor for purpose of prostitution etc., :—**

The Indian Penal Code punishes not only the selling of minors for prostitution but also the buying of minors for purposes of prostitution etc.,

Section 373 makes it an offence to buy, hire or obtain possession of any minor for the purpose of prostitution or illicit intercourse or for any unlawful and immoral purpose. The expression “illicit intercourse” used in Sections 372 and 373 means sexual intercourse between persons not united by marriage or recognised as a marital relation by any personal law.

The foregoing discussion makes it abundantly clear that kidnapping or abducting any woman whether married or unmarried, minor or major for the purpose of illicit intercourse, prostitution and other unlawful and immoral purposes are punishable as the aggravated forms of offences against body of a woman.

### **3.6.(h) Sexual offences against womenm (Rape)**

#### **SYNOPSIS**

(i) Introduction

(ii) Sexual Intercourse with wife

(iii) Punishment for rape

(iv) Marital rape

(v) Corresponding improvement

(vi) Punishment for disclosure of rape victim's name

(vii) Presumption of rape

(viii) Compensation to rape victims

(ix) Assistant to Rape victims

(x) Interim compensation

(xi) Rape of unchaste women

(xii) Delay in lodging complaint

(xiii) Duty of course while trying Rape cases

The Indian Penal Code deals with the various sexual offences against women in Sections 375 to 376D, 377 and 509. Of these offences, rape is the most brutal, which violates not only the body of woman but also mind in more than one way.

**(i) Introduction:-** Section 375 defines the statutory offence of rape. It denotes the sexual intercourse with a woman first, against her will, Secondly without her consent Thirdly with her consent obtained by putting her in fear of death or hurt fourthly with her consent when man knows that he is not her husband and if consent is given under her misconception of his identity as her husband fifthly with her consent when at the time of giving such consent she is under the influence of unsoundness of mind or administration of some substance to make her give consent sixthly with or without consent when she is under of sixteen years age. Thus it could be seen that it is a comprehensive definition by any standards.

The Explanation to Section 375 provides that mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Therefore it is not necessary that there must be complete and total penetration.

**ii) Sexual Intercourse with wife :-** According to the Exception to S.375, sexual intercourse by a man with his own wife if she is not under the age of fifteen years does not amount to rape. However in certain countries like U.K. and Sweden, marital rape has been made an offence

**(iii) Punishment for rape :—** Section 376 provides for punishment to the offender who commits rape. It is important to know that this Section imposes a minimum and mandatory punishment with years or even life Imprisonment depending on certain circumstances. Sections 375 and 376 have been substantially changed by the Criminal Law (Amendment) Act, 1983 The same Act has also introduced several new sections viz., Sections 376A, 376B, 376C, and 376D Indian Penal Code. Of these, Sections 376A punishes sexual intercourse with wife without her consent by a judicially separated husband, Section 376B punishes sexual intercourse by a public servant with

woman in his custody, Section 376C punishes sexual intercourse by superintendent of Jail, remand home etc., with inmates in such institution and Section 376D punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

Less than minimum statutory sentence for the offence of rape cannot be awarded in the absence of exceptional circumstances.

**(iv) Marital Rape :—**However it is felt that Section 376A dealing with rape by judicially separated husband should be treated as an ordinary rape. Lesser punishment of two years imprisonment is prescribed on the ridiculous reason “to facilitate reconciliation”. It is noteworthy that marital rape is an offence in United State of America, Sweden, Denmark, and Australia.

These new Sections have been introduced with a view to stop sexual abuses of woman in custody, care and control by various categories of persons which though not amounting to rape were nevertheless considered highly reprehensible. The amended Section 376 now prescribes minimum punishment as mentioned earlier. For combating the vice of custodial rape, rape on pregnant woman, rape on girls under 12 and gang rape, a minimum punishment of ten years imprisonment has been made compulsory. However, for special reasons to be recorded in the judgement the court in either case can impose a sentence lesser than seven or ten years, as case may be.

**(v) Corresponding improvement :—**A further improvement in the law relating to sexual offences has been made in the provisions of Sections 228A, Indian Penal Code, Sec. 327 (2) of Cr .PC. and Section 114A of the Indian Evidence Act, which too were introduced by the same amendment Act, 1983. The first provision aforementioned punishes a person who discloses the names or identity of the rape victim. The second provision provides a similar protection to the rape victim to the effect that the inquiry and the trial of rape should be conducted in camera. The third provision incorporates a presumption in the Indian Evidence Act, that where sexual intercourse by the accused with the prosecutrix is proved, and if she alleges

that she has been' raped, the court shall presume that she did not consent. All these provisions are intended for the protection and benefit of the rape victims.

**(vi) Punishment for disclosure of name of rape victim etc., :-**

Section 228A of the IPC punishes a person who prints or publishes the name or any matter which may identify any person against whom rape was committed or alleged to be committed under Sections 376, 376A, 376B, 376C, and 376D. This protection is introduced to protect the rape victims from the public ridicule and the stigma they carry if their identity is disclosed.

Recently the Supreme Court has held that trial of rape cases must invariably be held in camera. The Supreme Court further held that the courts should, as far as possible, avoid disclosing the names of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained throughout. Section 327 (2) of the Code of Criminal Procedure, 1973 also makes a similar provision to the effect that the inquiry into and trial of rape or an offence under Section 376 shall be conducted 'in camera'.

**(vii) Presumption of rape :—** Under Section 114A of the Indian Evidence Act, 1872, in a prosecution of rape under Section 376 of Indian Penal Code where sexual intercourse by the accused is proved and the question is whether there was consent of the woman alleged to have been raped, the court shall presume that she did not consent. Thus if the alleged victim states that she was raped, the court shall always presume that she did not consent. The reason for such a presumption appears to be that a rapist not only violates the victims personal integrity but also degrades the very sole of the helpless female. In the case of Doctor Sudhanshu Sekhar Sghoo vs. State of Orissa the Accused was a DMO alleged to have committed rape of a lady supervisor, The Prosecutrix was an educated lady of status. Her statement was believable, credible and consistent and same was made basis for conviction of the accused. In the case of rape conviction can be based on the sole testimony of the prosecutrix withopt any corroboration if her testi-

mony is otherwise worthy of credence. However corroboration by medical evidence can be insisted upon where such evidence is forthcoming. Absence of extensive injuries on person of the prosecutrix does not make her version a false one on that ground.

**(viii) Compensation to rape victims :—** The Supreme Court, in *Delhi Domestic Workin Women's orum us. Union of India* Suggested the formulation of a scheme for awarding compensation to rape victim at the time of convicting a person found guilty of rape. The Supreme Court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account pain, suffering, and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of the rape.

The Supreme Court suggested the setting up of a Criminal Injuries Compensation Board under the Directive Principles contained under Article 38 (1) of the Constitution of India. However it is unfortunate that the Government has not implemented the said directive of the court till today. The Apex Court in recent case of *State of Punjab us. Gurmit Singh* took cognizance of the above fact:-The-Supreme Court lamented about the crimes against woman and specially the rape in the following words;

Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the Broader probabilities of a case and not get swayed by minor

contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may; look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. (at page 498)

In the same case the Supreme Court categorically held that trial of rape case in camera should be the rule and an open trial in such cases an exception.

In the case of Kuntimon vs State it was desired that the victim has to be compensated and that the courts must compensate her for her deprivation, as nearly as possible.

In a recent landmark judgment a Supreme Court has laid down number of guide lines to prevent custodial violence including torture, rape, death ill police custody or lockup. The court has reiterated the newly recognised constitutional principles that custodial violence including custodial rape can be compensated as the same is an infringement of the right to life and personal liberty guaranteed under Article 21 of the Constitution.

**(ix) Assistance to Rape victims:-** In the case of Delhi Domestic Working Women's Forum vs U.O.I. the Supreme Court has indicated the following broad parameters in assisting the victims of Rape., as under.

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to



provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be a great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board, Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

(8) Compensation for victims shall be 'awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board

whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

**(x) Interim Compensation:-** In the case of *Bodhisattwa Goutham vs Subhra chakraborty* a person developed sexual relationship with the prosecutrix on false assurance of marriage and later secretly married her before God by putting vermilion on her forehead. He impregnated her twice but on both the occasions he compelled her to undergo abortion and ultimately deserted her. The Supreme Court directed the guilty person to pay Rs. 1000/- per month as interim compensation to the prosecutrix during the pendency of criminal case. This judgement is a precedent for granting interim compensation to the rape victims during the pendency of criminal case if a prima facie case is made out against the accused.

**(xi) Rape of unchaste woman :—**Rape victim need not be women of chaste character, The Supreme Court has laid down that the unchastity of a woman does not make her “open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to rape her. She is equally entitled to protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. Thus in the case of *State of Maharashtra vs Madhukar N. Mardikar*, the Supreme Court held that even a prostitute has a right to privacy and no person can rape her just because she is a woman of easy virtue. The foregoing discussion makes it clear that rape is considered as a serious offence that not only affects the body of a woman but also her basic human dignity which includes her privacy also.

**(xii) Delay in lodging complaint :—**In rape cases, merely because the complaint was lodged less than promptly, it does not raise the inference that the complaint is false. The reluctance to go to the police is because of society's attitude towards such woman; it casts doubt and shame upon her rather than comfort and sympathise with her

### **(xiii) Duty of Courts while trying Rape Cases**

The Supreme Court as pointed out in recent case, the duty of the courts which try the offence relating to rape. The Court observed that “the courts are elected to show great responsibility while trying, an accused on charges of rape. They must deal With such cases With utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general, and rape in particular is on the increase. It is an irony that while we are celebrating woman’s rights in all spheres, we show little or concern for her honour. It is a sad reflection and we must emphasise that the courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation”

The court has approvingly quoted in this case the observation of justice Dr. A.S. Anand in *State of Punjab vs Gurmit Singh* thus “The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity.”

### **3.6.(i) Offences Relating to Marriage**

Chapter XX of Indian Penal Code in Sections 493 to 498 deals with the offences relating to marriage. They are

- (1) Cohabitation by a man with a woman who is not his wife by deceit (Section 493).
- (2) Bigamy during the life time of a spouse (Sec. 494 and 495).
- (3) Mock marriage with fraudulent intention (Section 496).
- (4) Adultery (Section 497) and.
- (5) Enticing or taking away or detaining a married woman with criminal intention.

**(a) Cohabitation by deceitful means :—**According to Section 493 a man whether married or not, who by inducing a woman to believe that there is a lawful marriage between him and her cohabits with her is punishable with a maximum imprisonment of ten years. This offence may also be punished as rape under Section 375 (4). The offence has two ingredients.

- (1) Deceit, causing a false believe in the existence of a lawful marriage.
- (2) Cohabitation or sexual intercourse with the person causing such believe.

This offence is made punishable to prevent deception of vulnerable woman by men who may induce them to have sexual intercourse by falsely inducing them to believe that there is a lawful marriage. Section 496 punishes a person who contracts fraudulent or mock marriage and is similar to section 493. The only difference is that under section 493 it is essential that there must be deception and sexual intercourse subsequent on such deception.

### **3.6.j.Cruelty by Husband**

#### **SYNOPSIS**

- (i) Introduction
- (ii) Cruelty by vexatious litigation
- (iii) Mere demand of dowry an offence
- (iv) Every kind of harassment, not covered
- (v) Jurisdiction
- (vi) Suicide by mistress
- (vii) New Provisions
- (viii) Compounding of complaint

**i. The Dowry Prohibition Act, 1961**

**(i) Statement of Objects and Reasons :—** The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs. 2000. Such a provision appears to be necessary to make the law workable. (Gazette of India, 1959, Extra., Pt. II Section 2, p. 397. See Joint Committee Report, pp. 1191-93.

**ii. Statement of Objects and Reasons to Act 63 of 1984 :—**

The evil of dowry system has been a matter of serious concern to every one in view of its ever-increasing and disturbing proportions. The legislation on the subject enacted by Parliament, i.e., the Dowry Prohibition Act, 1961 and the far reaching 'amendments which have been made to eradicate the evil. As pointed out by the committee on the status of- Women in the educated youth is grossly insensitive to the evil of dowry and unashamedly contributes to it its perpetuation. Government has been making various efforts to deal with the problem. In addition to issuing instructions to the State Governments and the Union Territory administrations with regard to the making of thorough and compulsory investigations, into cases of dowry deaths and stepping up anti-dowry publicity, Government referred the whole matter for consideration by a Joint Committee of both the Houses of Parliament. The Committee went into the whole matter in great depth and its proceedings have helped in no small measure in focussing the attention of the public and rousing the consciousness of the public against this evil.

iii.. The following observations'made by late Pandit Jawaharlal Nehru which have been quoted by the Ccmmittee indicate the role which legislation can play in dealing with the evil:

Legislation cannot by itself normally solve deep-rooted, social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape.

The recommendations made by the Joint Committee of the Houses to examine the question of working of the Dowry Prohibition Act, 1961 have been considered keeping in view these observations and after taking into consideration the comments received on the Report from the State Governments, Union Territory Administrations and the different Administrative Ministries of the Union concerned with the matter. One of the important recommendations of the Committee for dealing with cruelty to a married woman by the husband or the relatives of the husband on the ground of non-receipt of dowry or insufficient dowry has already been given effect to by the Criminal Law (Second Amendment) Act, 1983. This Act amended, inter alia, the Indian Penal Code to include therein a provision for punishment for cruelty to married women and was aimed at dealing directly with the problem of dowry suicides and dowry deaths.

iv. The Joint Committee has recommended that the definition of "dowry" contained in Section 2 of the 1961-Act should be modified by omitting the expression "as consideration for the marriage" used therein on the ground that it is well nigh impossible to prove that anything given were a consideration for the marriage for the obvious and simple reason that the giver, i.e., the parents who are usually the victims would be reluctant and unwilling to set the law in motion. The omission of the words as consideration for the marriage would make the definition not only wide but also unworkable, for, if these words are omitted, anything given, whether before or after or at the time of marriage by anyone, may amount to dowry. Supreme Court has also placed a liberal construction on the word "dow as used in

Section 4 of the Dowry Prohibition Act, 1961 relating to demanding dowry. In the circumstances, it is proposed to substitute the words "in connection with the marriage" for the "words as consideration for the marriage" instead of omitting those words.

v. Section 3 of the Dowry Prohibition Act relating to the offences of giving or taking of dowry is being amended in accordance with the recommendations of the Joint Committee to make the punishment for the offence more stringent. All presents given at the time of marriage to the bride and certain types of presents given at the time of marriage to the bridegroom are proposed to be excluded from the purview of the offences under the section. However, the recommendations of the Committee for exempting the giver of dowry from punishment is not being given effect to as such exemption may only prove to be counter-productive.

vi. Section 4 of the Dowry Prohibition Act, relating to penalty for demanding dowry is proposed to be amended to make the punishment, thereunder more stringent on the lines recommended by the Joint Committee.

vii. Section 6 of the Act is being amended in accordance with the recommendation of the Joint Committee, to reduce the time limit within which dowry received in connection with the marriage of a woman by any other person should be restored to the woman from one year to three months. Likewise, the punishment for failure to restore such dowry within the said time limit is being made more stringent on the lines recommended by the Committee. Under a special provision which is being included in Section 6 where a person is convicted for failure to restore the dowry to the woman concerned within the period specified in the section, the Court may, in addition to awarding punishment, issue a direction requiring him to restore the property to the woman within the period, specified in the direction. In case of non-compliance with the direction, the value of the property would be recoverable from such person as if it were a fine and the amount so recovered may be paid to the woman concerned or, as the case may be, her heirs.

viii. Sections 7 and 8 of the Dowry Prohibition Act, are proposed to be amended to give effect to the recommendations of the Committee as to cognizance of offences under the Act and making offences under the Act cognizable.

xi. The Bill seeks to achieve the above objects. (Gazette of India, Extra., Pt. II, Section 2, No.33, pp.13-14).

**Statement of Objects and Reasons to Act 43 of 1986 :—** The Dowry Prohibition Act, 1961 was amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the Joint Committee of the Houses of the Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organisations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective.

The salient features of the Bill are :—

(a) The minimum punishment for taking or abetting the taking of dowry under Section 3 of the Act has been raised to five years and a fine of rupees fifteen thousand.

(b) The burden of proving that there was no demand for dowry will be on the person who makes or abets the taking of dowry.

(c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

(d) Any advertisement in any newspaper, periodical, journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned



and the person giving such advertisement and the printer or “publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine upto fifteen thousand rupees.

(e) Offences under the Act are proposed to be made non- bailable.

(f) Provision has also been made for the appointment of Dowry Prohibition Officers by the State Governments for effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women).

(g) A new offence of “dowry death” is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872 have also been proposed. The Bill seeks to achieve the aforesaid objects.

**(ii) Judicial Cognizance of the evil :-** The Supreme Court has explained the alarming increase in a number of dowry related offences in a recent case as under;

The alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides has always sent shock waves to the civilized society but unfortunately the evil has continued unabated. Awakening of the collective consciousness is the need of the day, Change of heart and attitude is needed. A wider social movement not only of educating women of their rights but also of the men folk to respect and recognise the basic human values is essentially needed to bury this pernicious social evil. The role of the courts, under the circumstances, assumes a great importance. The courts are expected to deal with such cases in a realistic manner so as to further the object of the legislation. However, the courts must not lose sight of the fact that the Act, though a piece of social legislation, is a penal statute. One of the cardinal rules of interpretation in such cases-is that a penal statute must be strictly construed.. The courts have, thus, to be watchful to see that emotions or sentiments are not allowed to influence their judgment, one way or the other and that they do

not ignore the golden thread passing through criminal jurisprudence that an accused is presumed to be innocent till proved guilty and that the guilt of an accused must be established beyond a reasonable doubt. They must carefully assess the evidence and not allow either suspicion or surmise or conjectures to take the place of proof in their zeal to stamp out the evil from the society while at the same time not adopting the easy course of letting technicalities or minor discrepancies in the evidence result in acquitting an accused. They must critically analyse the evidence and decide the case in a realistic manner.

**(iii) Act not a complete Code :-** The Dowry Prohibition Act, 1961 is not a complete Code that deals with dowry prohibition. Apart from this Act, the Indian Penal Code contains, Section 304B dealing with dowry death and Section 498A dealing with cruelty, related to dowry. The Indian Evidence Act, 1872 contains a presumption in Section 113B as to a dowry death.

**(iv) Non applicability to certain gifts :** The Dowry Prohibition Act, 1961 however does not bar in any way, the traditional giving of presents at or about the time of wedding, which may be willing and affectionate gifts by parents and close relations of the bride to her. Thus, a voluntary and affectionate giving of dowry and traditional presents would be plainly out of the ambit of 'dowry' as defined by the Act 2,

**(v) Definition of Dowry :-** Section 2 of the Act defines 'dowry' as any property or valuable security given or agreed to be given either directly or indirectly, by one party to a marriage to the other party or by the parents of either party to the other party, either at or before or any time after the marriage, in connection with the marriage of the said parties. The definition does not include "dower" or "Mahr" given as per the Muslim Personal Law (Shariat).

A clear analysis of the definition makes it very clear that it is a comprehensive and wide definition which covers almost all forms of dowry and it covers the period before, at and after the marriage takes place.

**(vi) Dower (Mahr) Not Dowry :—**Amount paid by a Mohammedan in connection with daughter's marriage, to prospective bride groom for purchase of property in of daughter and would be son-in-law is not "dow" "within the meaning of Section. The court further held that, once it is held as a matter of fact that certain articles of dowry were given to be exclusively owned by the wife then Section 27 of the Hindu Marriage Act, cannot make the least difference to such vested right of ownership.

**(vii) Penalty for Taking Dowry (S. 3) :—**Any person, who takes or gives or abets the giving or taking of dowry, is liable to be punished with a minimum imprisonment of 5 years and with a minimum fine of Rs. 15000/- or the amount of the value of such dowry, whichever is more. However the court is empowered to award a sentence of imprisonment for a term less than 5 years, for adequate and special reasons to be recorded in the judgment.

The very fact that a minimum imprisonment of five years has been provided, for the offence of giving or taking the dowry, speaks volumes about the intention of the legislature to eradicate this evil system.

**(viii) Presents given without demand [S. 3 (2)] :—**Any presents, which are given at the time of marriage to the bride or bride groom without any demand having been made in that behalf and which are customary in nature do not come under the purview of "giving or taking of dowry".

In order to be excluded from meaning of "dowry" such customary presents (i) should not be expensive having regard to the financial status of the giver of those presents and (ii) they should be entered in a list maintained in accordance with the Rules made under the Dowry Prohibition Act, 1961.

**(ix) Penalty for demanding dowry (S. 4) :—**The Act makes not only the giving or taking of dowry an offence but also mere demanding the dowry. Section 4 of the Act discourages the very demand for property or valuable security as consideration for a marriage between the parties. If any

person demands, directly or indirectly any dowry from the parents, guardian or other relatives of a bride or bridegroom, he is liable to be punished with a minimum imprisonment of 6 months but it may also extend to 2 years and fine.

However, if the Court feels that, in a given case the guilty deserves lesser 'punishment than the prescribed minimum six months imprisonment, it may impose such lesser imprisonment by mentioning adequate and special reasons in the judgment.

**(x) Demand for dowry and cruelty :—**The Supreme Court has held that the demand for dowry, prohibited under the Act, amounts to cruelty and the same entitles the wife to get a decree for dissolution of marriage. In the case of *Shoba Rani vs Madhukar Reddi* the court had an occasion to pronounce on the concept of cruelty. A new dimension has been given to the concept of cruelty while granting a divorce to the woman on the grounds of demand for dowry. In brief, the persistent demands for dowry is considered tantamount a ground for the purpose of granting matrimonial relief including divorce.

**(xi) Time for demanding dowry :—** The Act, in Section 4 is silent as to the time during which the demand should be made to constitute the offence. However in a recent landmark decision, the Supreme Court has held that the demand, even if made before the marriage amounts to an offence under Section 4 of the Act. In this case the court held that under Section 4 of the Act, mere demand of dowry is sufficient to bring home the offence to an accused and that any demand of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or vice versa would fall within the mischiefs of dowry under the Act. The noteworthy point laid down by the Supreme Court is that marriage in this context would include a proposed marriage also more particularly where the non- fulfillment of the demand of dowry leads to the ugly consequence of the marriage not taking place at all.

**(xii) Ban on Advertisements (S. 4-A) :-** Any person advertising through any media or mode, offering a share in his property or money or both as consideration for the marriage of his son or daughter or any other relative is liable to be punished with a minimum imprisonment of 6 months which may extend to even 5 years or with fine. However the court may award a lesser punishment in a fit case, for the special reasons to be stated in the judgement.

**(xiii) Mere Advertisement, Punishable :—**Thus campaigning in any form the giving of dowry is a distinct offence which is punishable by itself, notwithstanding the fact that the dowry offered is not given at all.

**(xiv) Dowry agreements, void (S. 5) :—** Any agreement for the giving or taking of dowry is void and it shall not have any value in the eyes of law. Therefore, a suit for recovery of such amount agreed to be given as dowry is not maintainable and cannot be decreed. Similarly, money paid under such void agreement cannot be recovered, inspite of the fact the marriage has not taken place.

**(xv) Civil Consequences of Taking Dowry (S. 6) :-**Where any dowry is received by any person other than the woman, it is obligatory on the part of the person, who has received the dowry to transfer it to the woman. The receiver of the dowry is under a legal obligation to transfer such dowry to the woman, generally within three months from the date of receipt or marriage, irrespective of the time of receipt.

Thus the consequence of giving and taking dowry in violation of Sections 3, 4, and 5 of the Act is not that the transaction is invalid. The beneficial interest in the transaction is with the woman and the taker is only a trustee. He must hold it for the benefit of the woman. The dowry shall be for the benefit of the wife or her heirs.

**(xvi) Failure to transfer :—**If any person fails to transfer the dowry as required by Section 6 (1) of the Act, it is an offence which is punishable with imprisonment or with fine or with both, but such punishment shall not

absolve the person from his obligation to transfer the property as required by the Act.

Therefore a suit for return of dowry articles would always be maintainable and the Dowry Prohibition Act will not stand in the way of maintaining the suit.

**(xvii) Death of wife before transfer :-** Where the woman, who is entitled to receive the dowry on transfer, dies within 7 years of her marriage, otherwise than due to natural causes, such dowry property shall be transferred to her children and in their absence to her parents.

**(xviii) Burden of Proof (S. 8-A) :—**Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, the burden of proving that he had not committed those offences shall be on the accused.

**(xix) Procedural aspects of the Act (S.7 to 10) :—**Sections 7 to 10 of the Act deal with the procedural aspects of dowry prohibition.

**(xx) Cognizance and Trial of offences :-** According to section 7 only a Court of the Metropolitan Magistrate or a Judicial Magistrate of First Class and no other inferior court has the jurisdiction to try the offences under the Act. The prosecution may be initiated either upon the own knowledge of the court or on a police report or complaint.

The complaint can be made by even a recognised welfare institution or organisation. In this context the expression “recognised welfare institution or organisation” means a social welfare institution or organisation recognised by the appropriate Government as such.

**(xxi) Sanction for prosecution whether necessary :—**It is a necessary prerequisite that prior sanction must be obtained from the designated court for prosecution in respect of offences of demanding dowry under Section 4. However the Punjab and Haryana High Court is of the opinion that, the sanction of the District Magistrate is not necessary to enable the trial court

to take cognizance for offence under Sections 4 and 5 of the Act, as the Act has been substantially amended by the Amending Act of 1984 by which no such sanction is required.

**(xxii) Application of Cr. P .C. (S. 8) to the offences under the Act :—**  
The Code of Criminal Procedure, 1973 is applicable to the offences under this Act, as if they are cognizable offences.

Thus demand and taking of dowry are cognizable offences by virtue of Section 8 of the Act. The offences are cognizable for the purposes of investigation of such offences.

**(xxiii) Non-bailable and Non-Compoundable offences :-** Every offence under the Dowry Prohibition Act is a non-bailable and non-compoundable offence.

The Criminal Procedure Code, defines “cognizable offence” as an offence for which a police officer may, arrest the accused without any warrant. (S. 2 (c))

## **II. Dowry Death and Dowry Suicide**

**(i) Introduction:-** The Parliament has taken a serious view of the increasing number of dowry deaths. The Law Commission of India also suggested number of measures in its 91st report, as mentioned elsewhere in this work to eradicate the evil of dowry deaths. Consequently the Indian Penal Code 1860, has been amended and also the Indian Evidence Act, 1961 to create the special offences of dowry death. The Criminal law (2nd Amendment) Act, 1983 which effected the relevant amendments has explained reasons for the same in its Statement of Objects and Reasons which is as under:

**Statement of Objects and Reasons :-** 1) The increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction murder of, the

hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws.

(2) The following are the changes which are proposed to be made:

(i) The Indian Penal Code is proposed to be amended to make cruelty to a woman by her husband or any relative of her husband punishable with imprisonment for a term which may extend to three years and also with fine. Wilful conduct of such a nature by the husband or any relative of the husband as is likely to drive the woman to commit suicide or cause grave physical or mental injury to her, and harassment of a woman by her husband or by any relative of her husband with a view to coercing, her or any of her relatives to meet any unlawful demand for property would be punishable as cruelty. The offence will be cognizable in information relating to the commission of the offence is given to the officer-in-charge of a police station by the victim of the offence or a relative of the victim of the offence or, in absence of any such relative, by any public servant authorised in this behalf by the State Government. It is also being provided that no court shall take cognizance of the offence except upon a police report or a complaint made by, the victim of the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or with the leave of the Court by any other person related to her by blood, marriage or adoption. [vide Clauses 2, 5 & 6 of the Bill].

ii) Provision is being made for inquest by Executive magistrate and for post-mortem in all cases where a woman has, within seven years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other person has committed an offence. post-mortem is also being provided for in all cases where a married woman has died within seven years of her marriage and a relative of such woman has made a request in this behalf. [vide Clauses 3 and 4 of the Bill].



(iii) The Indian Evidence Act, 1872 is being amended to provide that where a woman has committed suicide within a period of seven years from the date of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the Court presume that such suicide had been abetted by her husband or by such relative of her husband [vide Clause 7 of the Bill].

(3) The Bill Seeks to achieve the above objects”

Thus it is clear from the above statement of objects and reasons that the amendment of the Indian Penal Code and the Indian Evidence Act has been made to curb the inhuman practice of dowry deaths and to bring the culprits of such offences to the book effectively.

**(ii) Dowry Related Offences and Indian Penal Code :—**The Indian Penal Code, 1860 contains two specific provisions in the form of Section 304B and Section 498A to deal with two distinct offences namely causing dowry death and subjecting a woman to cruelty for dowry respectively.

**(iii) Dowry Death :—**According to Section 304B [inserted by Act No. 43 of 1986, Section 10] where the death of woman is caused by any burns or bodily injury under abnormal circumstances within seven years of a marriage such death is called dowry death and the husband or relative of such deceased wife shall be deemed to have caused her death. The offence has the following ingredients.

- (1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.
- (2) Such death should have occurred within seven years of her marriage.
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (4) Such cruelty or harassment; It should be for or in connection with demand for dowry.

If these conditions exist, it would constitute a dowry death and the husband and his relatives shall be deemed to have caused her death.

**(iv) Un-natural death, whether suicide or homicide :—**Where the death occurred under unnatural circumstances, it is immaterial whether it was the result of a suicide or homicide. Even assuming that it is a case of suicide even then it would be death amounting to dowry death under Section 304B. In a case the deceased pregnant woman died due to 100% burns and the occurrence took place at mid night in the house of the accused husband. There was a total absence of any cries or her shouts of the deceases. The supreme Court held in the case of Pt. Bhabudatt vs State of Maharashtra that it was a case of Homicide and not suicide.

**(v) Abetment to commit suicide by dowry harassment :—**Where it was proved that the mother-in-law and sister-in-law of the deceased were taunting the bride for bringing less dowry and having given birth to a female child thereby driving her to commit suicide, it would amount to causing dowry death.

**(vi) Dying declaration :—**Where a woman who was not in a position to speak at the time of giving dying declaration and as such her dying declaration was recorded by a magistrate on the basis of some nods and gestures made by her, making it clear that she was burnt, not accidentally but by her husband, such a dying declaration was held to be admissible and relied upon for conviction of the accused.

Similarly the Supreme Court has held in number of cases that the conviction of the accused can be based on dying declarations of the deceased if they are voluntary and trustworthy:

**vii. Burden of proof of innocence on the family :—**Every member of the family of the deceased, with whom she had been living before her death has the burden to prove his or her innocence. This burden of proof is imposed by Sec. 113B of the Indian Evidence Act 1872.

### **Viii. Indirect harassment for dowry and suicide :-**

In the case of State of Punjab vs Iqbal Singh a woman set herself and her three children ablaze. She was working as a teacher. Soon after the marriage there were disputes between the husband and wife on the question of dowry. The demand for extra dowry strained the relation between them and as a result the husband began to ill-treat the deceased wife. She also lodged a police complaint but could not pursue the same due to some understanding. In spite of the same, the situation did not improve and she was compelled to take the extreme step of putting an end to the life of herself and her three children. The Supreme Court convicted the accused husband under Section 304B and 306 of the Indian Penal Code.

**(ix) Abnormal circumstances of death :—** The Courts in India have held that death by drowning, by poisoning, due to burns, by hanging, by strangulation etc., are the instances of abnormal circumstances of death of a woman if it takes place within seven years of her marriage. Where the death is unnatural it is immaterial whether it was caused due to suicide or homicide and Section 304B will be attracted in either case.

In a recent judgment the Supreme Court held that even circumstantial evidence also may be the basis for punishing a person for causing dowry death. In Baldev Krishan vs State of Punjab the Supreme Court Division Bench held that where a young house wife died due to burn injuries in her matrimonial home and her dead body was found in the kitchen and the husband, the only other person staying in the house could not give proper explanation for the burn injuries, the circumstances under which the deceased sustained burn injuries show that it was a dowry death especially when the physical and mental ill treatment and harassment the deceased by her in-laws on account of insufficient dowry and also squint in her eyes was thorough.

### **III Cruelty by Husband or Relatives for Dowry**

(i) Introduction:-Section 498A of the Indian Penal Code deals with cruelty by husband or relatives of husband of a woman who is subjected to

such cruelty in connection with demand for dowry. The Section has been introduced in the Code by the Criminal Law (Amendment) Act, 1983 to combat the evil practice of dowry deaths. By the same Act Section 113A has been added to the Indian Evidence Act to raise a presumption regarding abetment of suicide by a married woman to the following effect:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

**(i) Mere demand of dowry an offence :—** The Calcutta High Court has expressed the opinion that by virtue of clause (b) of the Explanation to Section 498A, mere demand of dowry would be an offence. But, for the purposes of Sections, 4, 2(1) of the Dowry Prohibition Act, 1961, it is necessary that dowry should have been given or agreed to be given. In a subsequent case under the section, it was on record that the husband accompanied his deceased wife to his in-laws to ask not only for unpaid balance of the agreed dowry but also for additional dowry. This was held to be sufficient to constitute an offence under this section.

**(ii) Jurisdiction :—**A wife; maltreated for dowry, was sent back to her father where she became ill because of shock and after effects of cruelty. The court having jurisdiction at the place was held competent to entertain a complaint both under Section 498A in respect of cruelty and also under Section 181 (4) of Cr. PC, 1973 in respect of misappropriation of stridhan.

**(iii) Suicide by mistress :—** If the cruelty or harassment of this kind described in the Act is meted out to a mistress which leads to her suicide, Section 304B would also cover such cases

### **ix. Compounding of Complaint :-**

Where the wife had condoned the matrimonial cruelty of which she was the victim and had resumed consortium with her husband, the court found no obstruction in the provisions of the section in permitting them to compound the complaint and, therefore, ordered accordingly. In a similar approach was not adopted by the Andhra Pradesh High Court which pointed out that the wife cannot be permitted to withdraw the charge sheet if it is filed by the police.

## **LABOUR LAW**

### **3.6.k.Equal Pay for men and women**

#### **(i) Introduction:-**

In the sphere of Industrial Law, the women have been assigned a special position in view of their unique characteristics, physically and mentally. The Constitution of India which is the fundamental law of the land contains number of provisions to protect the interest of woman and also to prohibit gender discrimination. The preamble specifically declares that one of the main purposes of the constitution is to secure social, economic and political justice along with equality of status and of opportunity to all the citizens. This is irrespective of the sex. This specific mandate given to the State has resulted in number of protective, beneficial and health provisions made in various enactments for the benefit of woman.

In *Associate Banks Officers Association vs State Bank of India* the Supreme Court explained the history and evolution of the principle “equal pay for equal work” Historically, equal pay for equal work has been a slogan of the women’s sex-based discrimination in the pay scales of men and women doing same or equal work in the same organisation. In- India, the Equal Remuneration to men and women workers and is meant to prevent discrimination on the ground of sex, against women in the matter of employment,. In England also, the Equal Pay Act, 1970 and the Equal Pay) Amendment) Regulations, 1983 have been enacted to serve the same purpose.

**(ii) The Equal Remuneration Act:-**

Article 39 of Constitution of India specifically directs the States to secure equal pay for equal work for both men and women. To give effect to this constitutional provision, the Equal Remuneration Act, 1976 has been enacted. This Act provides for payment of equal remuneration to men and women workers for the same work or a work of a similar nature and for the prevention of discrimination on grounds of sex.

**3.6.L. Medical Termination of Pregnancy Act (M.T.P.A)****Introduction :-**

In India, Termination of Pregnancy by unregistered medical practitioners and quacks is common place. The reasons for such abortions are many which include ,superstitions and carrying illegitimate children etc., Prior to 1971 a termination of pregnancy was not regulated by any law. However the Indian Penal Code provides for many provisions to punish the persons responsible for miscarriage. Sections 312 to 316 of the Indian Penal Code punish the persons causing miscarriage, preventing a child being born alive or causing the death of quick unborn child. In spite of these Penal provisions the practice of causing miscarriage continued in India for various social and medical reasons. Therefore the Parliament has decided to provide for the termination of certain pregnancy by registered medical practitioners.

The termination of pregnancy by quacks, and unregistered and unqualified medical practitioners caused irreparable damage. to the woman concerned and also caused death in many cases. The practice has been found to be hazardous to the health of the woman who are pregnant. In most of the cases the abortion was forcefully carried out to prevent the birth of a female child and in the process most of the women also lost their lives besides certain other medical damages. These were the main reasons that prompted the Parliament to make a law to regulate termination of pregnancy only in certain' cases and only by registered medical practitioners. The main purpose of the Legislation called The Medical Termination of Pregnancy Act, 1971 is to provide for the termination of pregnancy by regis-

tered medical. practitioners where it continuance would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health or where there is a substantial risk that if child were born, it suffered from such. physical or mental abnormalities as to be serious handicapped.

**(ii) The Medical Termination of Pregnancy Act, 1971 :—**

The Parliament has passed this enactment to provide for the termination of certain pregnancies by registered medical practitioners and other matters connected with such termination. The Act consists of 8 Sections dealing with various aspects like the time, place and circumstances in which a pregnancy may be terminated by medical practitioners legally. Here the 'medical practitioner' means the persons who possess any recognised medical qualifications as defined in The Indian Medical Council Act, 1956 and whose name has been entered in State Medical Register. Such person must have experience or training in gynaecology and obstetrics.

**(iii) Circumstances in which pregnancy may be terminated (Section 3:—**

A pregnancy may be terminated by a medical practitioner only when any of the following conditions is fulfilled:-

- (a) where the length of pregnancy does not exceed 12 weeks that is three months, it may be terminated by a single registered medical practitioner.
- (b) where the length of pregnancy exceeds 12 weeks but does not exceed 20 weeks, it may be terminated by not less than two registered medical practitioners.

Such termination can take place only when such medical practitioner(s) form(s) an opinion in good faith that.

- (i) the continuance of pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
- (ii) there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(iii) Therefore it is clear that termination of pregnancy can take place only on medical grounds that too when the registered medical practitioner has formed the above opinion in good faith.

(iv) Grave injury to mental health :—If the pregnancy is alleged to be caused by rape, the anguish caused by such pregnancy is presumed to constitute grave injury to mental health of pregnant woman. Similarly if the pregnancy is caused as a result of failure of any family planning device used by any married woman or husband, the anguish caused by such unwanted pregnancy is presumed to constitute grave injury to the mental health of the pregnant woman. Therefore a pregnancy caused by rape or which is unwanted may be medically terminated under Section 3 of the Act.

(v) Age of the Pregnant Woman (Section 3) :—Section 3 (4) of the Act specifically provides that the pregnancy of a woman, who has not attained the age of 18 years cannot be terminated except with the written consent of her guardian. Similarly if the pregnant woman is above 18 years of age and is a lunatic, then also the written consent of her guardian is essential.

(vi) Consent of pregnant woman :—In every case of medical termination of pregnancy, the consent of the pregnant woman is absolutely essential. However if the pregnant woman is a minor or a major but is a lunatic, then the written consent of the guardian of such woman is essential.

(vii) Place of termination of pregnancy (Section 4) :—A medical termination of pregnancy can be made only at a hospital established or maintained by the Government or at other places approved for that purpose by the Government. Therefore the termination of pregnancy may be carried out only at a 'hospital which is fully equipped with all the medical facilities.

(viii) Overriding effect of the Act :—The Medical Termination of Pregnancy Act, 1971 has been given overriding effect over The Indian Penal Code, 1860 which deals with the offences leading to miscarriage. This Act creates a specific offence where the pregnancy is terminated by an unregistered medical practitioner. This is an independent offence and shall not affect the provisions of the Indian Penal Code dealing with the offence, of causing miscarriage.



From the above discussion, it becomes clear that the Act of 1971 is a welfare legislation aimed at protecting the physical and mental health of a pregnant woman and also of the child being carried in the womb of the mother. purpose of prostitution in any public place or within sight of it. Here the soliciting may be by any communicable form like words, gestures, wilful exposure of her person or otherwise tempting any person for prostitution. Seducing normally means drawing aside from the path of rectitude and duty in any manner; to entice to evil or to induce to surrender chastity.

### **3.6. (m) Prevention of Immoral Traffic Act.**

First and foremost the definition of “prostitution” should be amended so as to bring even the promiscuous intercourse carried by a single person within its purview. At present prostitution ‘per se’ is not an offence under the Act and is punishable only under certain circumstances. It is desirable that prostitution is made punishable irrespective of the circumstances under which it is committed, so that this social evil can be combated effectively.

In the case of Vishal Jeet vs Union of India. The Supreme Court has taken note of the fact that many poverty stricken children and girls in the prime of youth are taken to “Flesh Market” and forcibly pushed into the flesh trade which is being carried on in utter violation of all canons of morality, decency and dignity of human kind. The Supreme Court Division Bench speaking through justice S. Rathnaveel Pandian has suggested the following measures for the purpose of eradicating the evil of prostitution. What can we do with regard to “Sahanas” a lady getting married to 50 times, and sangeetha.

(1) All the State Governments and the Governments of Union territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.

(2) The State Government and the Governments of Union territories should set up a separate Advisory Committee within their respective zones

consisting of the Secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists, criminologists, members of the women's organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well the members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions of :

(a) the measures to be taken in eradicating the child prostitution, and

(b) the social welfare programs to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.

(3) All the State Governments and the Governments of Union territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.

(4) The Union Government should set up a committee of its own in the line, we have suggested under direction No. (2) the main object of which is to evolve welfare programs to be implemented on the national level for the care, protection, rehabilitation etc. of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.

(5) The Central Government and the Governments of States and Union territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees; and,

(6) The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the government could do in that regard.

It is sincerely hoped that the Parliament will make suitable changes in the existing law so as to make it more effective for the purpose of eradicating the obnoxious, abominable and unthinkable crime of vulgarity.

**7. Rehabilitative and Remedial provisions :—** The Immoral Traffic (prevention) Act, 1956 is not a pure penal legislation. It is also social welfare legislation and aims at the rehabilitation and correction of the female and child offenders found guilty of indulging in prostitution. According to S.10-A of the Act, a female offender found guilty of an offence of carrying on prostitution at a public place etc., may be ordered to be detained in a corrective institution for a term not less than 2 years and not more than 5 years.

**8. Suggested Measures :—**In view of the explosion of sex related diseases and more particularly the dreaded AIDS disease which is fast spreading in developing countries like India, the immoral Traffic Prevention Act should be adequately amended further.

**9. Rescue and Rehabilitation of Prostitutes and their Children :—**

Recently the Supreme Court delivered a judgement of far reaching circumstances, pertaining to the rescue and rehabilitation of prostitutes and also their children. In **Gaurav Jain vs. Union of India** the court speaking through Justice K. Ramaswamy has elaborately dealt with this issue. The summary of the guidelines laid down by the court is as follows:

- (1) Counselling, Cajoling and Coercion are necessary to effectively enforce the provisions of the Immoral Traffic (Prevention) Act and the Juvenile Justice Act. (Care and protection) Act 2000.
- (2) It is the duty of the State and all voluntary non- government organisations and public spirited persons to come to the aid of the prostitutes to retrieve them from prostitution, rehabilitate them by lending them a helping hand to lead life with dignity of person, self- employment through provision of education and financial support.
- (3) Women found in the flesh trade should be viewed more as victims of adverse socio-economic circumstances rather than as offenders in our society. The commercial exploitation of sex may be regarded as a crime but those trapped in custom-oriented prostitution and gender-oriented prostitution should be viewed as victims of gender-oriented vulnerability.

4) The customar initiation of women in the practice of Devadasi, Jogins and Venkatasins prevalent in Andhra Pradesh, Karnataka and Maharashtra areas and the resultant practice of Prostitution is a crime against humani violation of human rights and obnoxious to the constitution and the Human Rights Act. They are void under Article 13 of the Constitution of India and are punishable under the law and the children of fallen women and also child prostitutes should be rescued and rehabilitated.

In fact the Supreme Court has exercised its extra-ordinary rule making power under Article 145 and also under Article 124 to lay down a comprehensive scheme to rescue and rehabilitate the victims of sexual exploitation due to societal conditions and children. The apex court deserves accolades for such an initiative, which infact should have taken by the political branches of the Government i.e. the legislature and executive.

Women considered as the. weaker are the most vulnerable section of society who are subject to various exploitations, humiliations, harassments, tortures and degradations. The development of a society is measured in terms of the development of women. Hence it is the constitutional right and privilege of the Indian woman to be protected against atrocities and violence and discrimination of any kind. The Indian Penal Code make provisions for the identification of various crimes, specifying the sections and prescribing the punishment for the offenders.

Besides these legal provisions the following points have to be considered to combat the problem.

1. Role of voluntary organization and promoting women groups. The strategy tomobilize women by promoting women groups can generate awareness among women create leadership quality and help them to gain self esteem. Women groups can be very effective in securing proper enforcement of law and protecting and brining crimes against women to the public at large.
2. Role of education, promoting self confidence and empowerment of women.

Promoting female education and raising their economic states and cru-

cial towards achieving equal status for woman. Promotion of self confidence is important to sensitize women to their place in an egalitarian society and to their rights as enshrined in the constitution and other laws and their role in the new economic order.

### **Conclusion**

Social justice for woman is the keystone of Indian constitution. To improve the lot of women. The following reliminary efforts may be directed.

1. The inherent nature of many social legislation is confusing and sometimes contradictory. Some alteration should be made in these legislations.
2. There is a necessity to accelerate the process of change by deliberate and planned effort to change the attitudes of people.
3. People's particiapation especially of the female section of the population in the form of organization effort, is to be encouraged for the successful implementation of laws.
4. Education for woman is very essential. Special emphasis should be given to legal education in order to teach them about their legal rights even at school level.
5. Free legal aid should be provided to women to fight for the rights
6. A proper system of inspection should be evolved by the government to safeguard their rights
7. Voluntary organization members of the community should be entrusted with the supervision of enforcement of social laws.
8. Adherence to social laws should be added as a clause to the conduct rule of government servants
9. A good network of family courts with quick settlement of the cases will be quite helpful in providing legal justice to women.
10. The police should be more vigilant and strict to adequacy enforce the

laws and to see that the offenders do not go Scot -free. The police should be sensitized to the problem of women and crimes against women.

11. The media can play a very important role in educating the masses and preparing them to accept modern values of social justice, equality and liberty.

12. Financial independence for girls could be ensured by parents giving them a share in their property.

### **3.7. FOCUS ON CHILD VICTIMS**

#### **Child victims in the criminal justice system**

The judicial system has begun to accept that children do not to be familiar with complex concepts or need to understand legal terminology or procedures that they are capable of repeating what they saw or heard about a crime. This wise intervention has not, however, paved the way for children to be seen as children to be seen as children and allowances to be made because they were in fact children. Rather, barriers have been and are still placed in their way.

America's justice system has treated child victims and witness shamefully. Following the old adage, "Children should be seen and not heard, the American court system for many years effectively excluded the testimony of child victims and / or witness.

In 1982, the American President's on Victims of Crime addressed the need to treat child victims and witnesses differently than their adult counterparts. Simultaneous to the issuance of the President's Task Forces Final Report recommendations. The first comprehensive piece of crime victims legislation was enacted in the federal level. For the first time, fair treatment standards for victims and witnesses were mandated including child victims and witnesses through the passage of The Federal Victims and Witness Protection Act of 1982.

#### **Check Your Progress**

5. Examine Right of Women to economic development.
6. What is outraging the modesty of a women.
7. Write about sexual offences against women.
8. Examine cruelty by Husband
9. Explain the Objects and Reasons on Dowry Prohibition Act.
10. E x a m i n e M.T.P.Act.

- Limiting the competency examinations of children except when the court determines on the record compelling reasons for doing so.
- Ensuring the child to be accompanied during the court Process by an adult attendant.
- Mandating a speedy trial in order to minimize the length the child must endure the stress of involvement with the criminal process. Although only a small percentage of child victimization cases are criminally prosecuted in any court system the need to support the child during the disclosure and healing process is critical.

Services for child victims and witnesses could be decided on the strengthen of a Criminal case; rather the criminal process should be seen as only one element in the handling of child victims and witnesses. There is no doubt that prosecutions are improved with victims! witness support and assistance from criminal justice personnel to child victims witnesses and their parents guardians. Child victims witnesses that posses an understanding of the legal system are:

- More at ease with the role they are to play in the prosecution of the defendant
- More cooperative with the justice process
- Better able to cope with the intimidating and often traumatic experienced of testifying.
- Parents and guardians of child victims and witnesses who are familiar with the justice process, their child's rights in the criminal justice system, and the role their child will have are better able to:
- Support their Child's participation in the justice system.
- Identify and meet their child's emotional needs.
- Understand their own emotional needs and concerns.

Court preparation programmes that include non-offending families, guardians and siblings are important to reduce the child victims / witnesses anxiety and their own concern for the child's emotional and physical safety. Sometimes parents/ guardians and siblings often feel more anxious than the actual child victim/ witness about court participation. It is important to keep their needs in mind as well.

If a parent / guardian is supportive of victim services her or she is more likely to allow the child victims / witness to fully participate in all phases of the justice process. The testimony of child victims/witnesses plays a substantial role in the successful prosecution of a criminal case. However, the involvement of children in the justice initiatives for crimes dealing with children. These provisions address the following areas:

- Registration of sexually violent offenders
- Repeat sex offenders
- Child sex tourism

In additional federal law now provides for community notification of the release of predatory sex offenders.

### **3.7.a) Sexually violent offenders registration**

The Attorney General of the United States is directed under the Act to establish guidelines for state programmes that require persons convicted of certain crimes against children -kidnapping, and sexual misconduct to register their addresses with an appropriate state law enforcement agency upon their release from prison.

This registration requirements continues for 10 years after the offender is released from imprisonment or placed on probation. In case where the crime committed was sexually violent, "the registration requirement applies to persons committing an offence against an adult or a child. In such cases, "Sexually violent" predators must remain registered until a court determines



that they no longer: suffer from a mental abnormative that would make a predatory sexually violent offense likely.

### **Repeat sexual offender**

The 1994 Act doubled the maximum prison term applicable to repeat sexual offenders. Specifically if an offender commits a sexual abuse or sexual contact offence under commits a sexual abuse or sexual contact offense under federal law after one or more prior conviction for a federal or state sexual abuse or sexual contact offense, the maximum term of imprisonment is doubled.

### **3.7.(b) Child sex tourism**

A new "child sex tourism" offence was created under the 1994 violent crime control law enforcement act that makes it illegal for a U.S. citizen or permanent resident to travel in interstate or foreign commerce with the intent to engage in sexual acts with a minor that are prohibited under federal law in the United States. This provision applies regardless if these acts are legal in the destination country.

Promising practices for child victims and witnesses: The following practices, effective as a whole or in part have proven to be highly successful in assisting victimized children and their families:

- Referral for mental health counseling and I or other appropriate community based services programmes
- Assistance in meeting emergency financial outlays for medical or mental health treatment.
- Assistance in meeting all other emergency financial needs such as shelter, food and transportation
- Intervention with school or neighborhood officials if the child victim or witness experienced threats intimidation or other forms of harassment by a child offender and his or her friends. This may include helping the child to transfer to another school.

Reporting threats or acts of intimidation harassment against child victims/ witnesses to proper authorities for intervention.

Informing the child victim parents of their rights under the victim compensation laws of their state.

Providing information on the criminal justice system and the child's role and rights in the process.

Providing court accompaniment of child victims witnesses to the courtroom. If allowed remain the courtroom during the child's testimony

Relaying information to the prosecutors so he or she can make decisions for speedy trial motions request for video or two way cameras taping of the child victims witnesses testimony closing of the courtroom to the public etc.

Apprising the prosecution of the waiting room stocked scheduled so that he or she can request the judge accommodation of that schedule.

Providing a secure separate waiting room stocked with toys, books or television when the child victim witness is required to wait to testify.

If appropriate the child and parent / guardian with the preparation of a victim impact statement and explaining its use. Many states and the federal government accept victim impact statements in formats that are commensurate with a child victims age and cognitive development i.e drawing pictures writing stories etc.

Incorporating the child witness into a formal court oriented programmes or establishing an individualized victim/ witness orientation programmes.

Providing a secure waiting area for child victims/ witnesses and family members away from the offender and his or her family.

- Providing information on the outcome of criminal justice proceedings as allowed under the states confidently statutes.
- Providing multi- lingual services that are dialect specific to children and their family members where appropriate including translators and written materials and services adapted to meet the needs of physically or mentally impaired child victims witnesses,

## **INCREASING CHILD ABUSE -A GROWING MENACE**

In recent days birth advancements in science and as children's tastes get none sophisticated starting from preferred food items they choose culminating in their choice of career their parents have a harder job in canalizing their energy along right pathway. Child care mammals insists that parents should treat babies and toddlers as their friends and colleagues while our fore fathers used euphemism, whimsy and other swaddling to keep their offspring younger than they were modern children are raised older than their Hans Anderson's fairy tales, Panchatantra, Ambulimama etc that kindled their inner spirit of humour, adventure explanation, amusement inquisitiveness etc.

### **3.7.(C) What is child abuse?**

According to Oxford Dictionary it may be defined as maltreatment of child through physical violence! labour or sexual molestation.

#### **Definition of child abuse**

General legal definition of child include physical abuse denial of critical care (neglect) or sexual abuse. The three types of child abuse are defined as follows :

Physical abuse any non accidental physical injury or injury that is inconsistent with the explanation given for it suffered by a child as the result of an act or omission by the person responsible for the care of the child. This includes fractures, burns, bruises, welts cuts and internal injuries. Physical abuse often occurs in the name of discipline or punishment and range from a slap of the hand to use of object such as straps, belts kitchen utensils, electrical cords, and pipes.

## **Denial of critical care (Neglect)**

The failure on the part of a person responsible for the care of a child to provide for the adequate food shelter, clothing, emotional support, or other care necessary for the child's health and welfare that places the child in a life or health -threatening situations.

### **Sexual abuse**

The commission of a sexual offence is with or to a child through the acts or omission of the person responsible for the care of the child. Sexual offence in the first second and third degrees, detention in brothel, lascivious acts. Indecent contact, incest, sexual exploitation assault with intent to commit sexual abuse, or child prostitution.

November 19 is observed as **World Day for Prevention of Child Sexual Abuse (CSA)**. CSA happens when children are employed in home holds, “**Tulir**” -a Chennai based NGO organized a poster exhibition along with Women's Christian College Chennai on 19<sup>th</sup> November 2005. One very telling symbol was a mop with its head plaited -A board next to it read 'should not she be in the school Another poster has the recipe for Fred lady's finger. The method: First find tender lady's fingers. The younger the lady is (below 12 years) the better the fingers. Freeze her with a glare knead her knuckles till she whimpers. Gruesome -but true.

Cherishing children is mark of a civilized -hall mark of children mind is killed nowadays, Childhood is impressionable period and childhood situation is an important beginning for what individuals do later.

Gynaecologists have come across unwed pregnancies in children with in a month of attaining puberty. Pregnancies are seen by gynaecologists - which are not very uncommon. Parents bring their children for MTP. With increasing evening colleges and correspondence course.s, computer courses every alternate couple consult a lady doctor fur unmarried pregnancy! In America the amount of violence against children is surprisingly large 1.5-2 million children are abused by parents.

**Incest**

Most sexual abuse of children like violent abuses is perpetrated by their own families. Because of the extremely scandalous nature of the incest there are great to keep it hidden and it is difficult to estimate its rate of occurrence from quite a few cases that come to light.

The sex scandal came to light in April 2011. When the girl's Mother lodged a complaint against her husband saying he has thrown the girl into prostitution. The girl revealed that she was sexually abused by more than 100 men including her father at Paravur near Kochi for two years. In Tamil Nadu she was reportedly taken to places like Kanyakumari, Palani and Coimbatore by her father and forced to prostitution. K.S. Sakthivel, a special branch Inspector in Kanyakumari, has also allegedly raped her. After allegations cropped up he was transferred to Srivaikuntam Station in Thirunelveli district, but he failed to report for duty. As his whereabouts are not known Tamil Nadu Police declared him as a "deserter".

The girl's father T. Sudheer (3a) a small-time Malayalam film actor was sentenced to life imprisonment by a court in Ernakulam. The court also ordered him to pay a fine of Rs.50,000/-. Delivering the judgment, sessions court judge P.G. Ajith Kumar observed "There can never be a graver heinous crime than the father being charged of raping his own daughter. It is betrayal of trust. The father is fortress and refuge for his daughter.

Usually traditional family structures are not abusive. As long as power relationships remain stable and no one challenges them, as long as there are no family stresses as long as there are plenty of economic and social resources for dealing with stress things may be peaceful. In the old-fashioned traditional family everyone knew his place parents tough knitted family. When conflicts arise even in such families life could be cruel. Modern society does not reflect this harmonious family structure. The newer structure is one in which family is connected with outside world than a nuclear family of the past to sum up.

Violence is widespread in American society, as evidenced by homicide and rape rates much higher than industrialized countries

Child abuse, wife abuse of elder abuse have been recognized as important social problems but efforts to reduce such problems have been hampered by the assumption that the family is a private domain.

Socially isolated families have more violence and of socially isolated women are less likely to leave an abusive relationship.

Most of the child battering is not done by psychotic parents but by normal parents in particular circumstances children who are specially demanding including handicapped children are likely to be abused. Abusive parents tend to be those who have little commitment to the role of parent or who have difficulty making transition from the youth culture themselves.

Most often mothers are likely to be the abusers of small children, fathers of teenage children. Abuse of small children is most likely in the lower strata of social classes Teenage abuse is less well understood.

Violences often occurs within traditional families that believe in traditional authorization gender and parent roles

The common features of family violence include (1) it is an abuse of powerless by most powerful (2) it is often a response to a perceived lack of power (3) its victims tend to suffer low self esteemed and blame themselves (4) it occurs under conditional of poverty, stress male dominance and soicla Isolation.

### **Teach wisdom Not Trade in School**

It society today is plagued by so much violence and corruption in public life it can to a great extent be traced to the lackadaisical handling of character and value education in our schools and colleges.

**Winston Churchill** said "The first duty of an university is to teach wisdom not trade character not technicalities" the same idea was expressed by Ruspitun when he said All education must be moral primarily intellectual secondarily. Historian Arnold Toynbce said "Of 21 notable civilization, 19 perished not from conquest from without but from decay from within" Education should help students organize their physical, intellectual, emotional, social, spiritual activities, aptitudes tendencies of habits of not turn into violent individual.

The youth should be shown a way out of poverty through computer education. Surfing the internet and learning to use computers make sense when these skills mean better economic opportunities. Computers provide access to educational resources that increase the capacity of young children to become self reliant in today's global market place" (EETP -Entrepreneurship and employment Training Programme)" vision to Action Curriculum.

Need of the hour is to stimulate children towards creative activities - sports help position development. Provide every child self assurance for the intensification of wisdom found in every child. Ignite their mends.

Students Upliftment Animation Movement

Supam Hupam

"Acts of love and needs of Humanness that go a long way".

- We owe a lot to Indians, who taught us how to count, without which no worth while science discovery could been made - **"Alpert Einstein"**
- So far as I am able to judge nothing has been left undone, either by man or nature to make India the most extraordinary country that the sun visits on his minds. Nothing seem to have been forgotten nothing overlooked - **"Mark Twain"**.
- If there is one place in the face of earth where all the dreams of living man have found a home from the very earliest days when began dream of existence, it is India - **"Romaine Rolland"**.

Not in front of children Mark Lawson November 19, 05 Sat. p.11  
adult in love and theme films should not be screened during prime time.

### **3.8.VICTIMS OF DOMESTIC VIOLENCE**

Domestic violence is any assault, battery, sexual assault, sexual battery, or any criminal offence resulting in personal injury or death of one family or household member by another, who is or was residing in the same single dwelling unit. "Family or household member" means spouse, former spouse, persons related by blood or by marriage, persons who are presently residing together, as if a family, or who have resided together in the past, as if a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time.

Domestic violence is an ongoing, debilitating experience of physical, psychological, and/or sexual abuse in the home, associated with increased isolation from the outside world and limited personal freedom and accessibility to resources. Whenever a woman is placed in physical danger or controlled by the threat or use of physical force, she has been abused. The risk for abuse is greatest when a woman is separated from supportive networks. Physical abuse is usually recurrent and escalates both in frequency and severity.

#### **3.8.(a) Domestic Violence Victims Characteristics**

Domestic violence cuts across all lines related to the victim's socioeconomic status, race, culture, age, marital status, and geographical location. Victims of battering share a number of traits, many of which contribute to their inability to leave the violent environment: .

- Blames herself for the violence.
- Exhibits low self esteem (which is magnified by the batterer's confirmation that she is "worthless").
- Fears leaving or staying. -Minimizes or denies that a problem exists.



(Space for Hints)

- Is often isolated from family, friends, and any support systems.
- Exhibits unpredictable behaviour (stemming from the unpredictable behaviour of her batterer).
- Feels shame and guilt.
- Characterizes herself as a traditionalist in the home.
- Accepts responsibility for the batterer's actions, and believe she deserves the punishment she receives.
- Uses sexual relations as a way to establish intimacy.
- Often believes she can change the batterer's behaviour.
- Often believes she can help herself without outside intervention.

### **Batter Characteristics**

Men who batter share many characteristics. However, it is important to note that not all batterers possess all the following characteristics:

- Abuse of alcohol and other drugs.
- Experienced or witnessed violence in his family of origin.
- Often has a criminal record.
- Low self esteem.
- Overly dependent on the victim.
- Extremely jealous and possessive.
- Has learned to express many or most emotions through anger.

### **Victims of Domestic Violence**

- Scores normal on psychological tests, except has a greater tendency toward violence.

- Blames others for his action, and is unwilling to accept responsibility for his violence (which is reinforced when the criminal justice system fails to hold him accountable through appropriate sanctions).
- Attempts to manipulate and/or control others.
- Denies or minimizes the effects of his violence on his victims and witnesses.
- Lacks good parenting skills.

### **3.8.(b) Domestic Violence Effects on Children**

It is significant that seven out of ten persons who enter into domestic violence shelter are children. The effects on children who witness family violence or who, in some cases, are themselves victims, were summarized in Family Violence:

The ramifications of family violence have almost no boundaries. In additions to the obvious physical injuries and deaths that result, family violence is often cited in research and clinical case studies as contributing to numerous other individual, family and societal problems. For example:

- Victims of all types of family violence share a common experience of denigration of self that results in diminished self-esteem. The shame and feeling of worthlessness so often expressed by battered women are shared by maltreated children, as well as maltreated elderly parents".
- Children learn from an important role model (the parent) that violence toward a loved one is acceptable.
- Children exhibit fear, emotional symptoms such as psychosomatic complaints (physical complaints created by psychological stress), school phobias, enuresis (bed wetting), and insomnia. Young children may either try to stop the violence, thus putting themselves at risk for unintended harm, or respond with immobilized shocked staring, running away and hiding, or bed wetting and nightmares.

- After age five or six, children show strong indications of identifying with the aggressor and losing respect for the victim.
- Many children suffer low self-esteem, sadness, depression, stress disorders, poor impulse control, and feelings of powerlessness, and they are at high risk for alcohol and drug use, sexual acting out, running away, isolation, loneliness, fear and suicide.
- Sons become aggressive, "act out, become disobedient and behave defiantly and destructively", whereas daughters become "withdrawn, clingy, dependent".

### **3.8.(c) Domestic Violence and the Criminal Justice System**

In general, there are eight junctures throughout the criminal justice system about which service providers should possess knowledge that can be easily shared with victims:

- Initial contact
- Police response/arrest.
- Pre trial release.
- Prosecution and the courts.
- Availability and enforcement of protection orders.
- Docketing.
- Dispositions.
- Monitoring of offenders.

#### **Initial Contact**

Domestic violence calls should receive priority from law enforcement agencies. Dispatchers should be specially trained in how to handle such calls, including victimsensitivity and having non-judgmental attitudes in cases of

repeat calls. Information dispatchers should obtain that is essential to police response includes, but is not limited to:

- Who is calling.
- Address of complainant.
- Telephone number (usually automatically provided by computer in 911 systems).
- Location of caller if not at the scene of the crime.
- Who is present (including children).
- What is happening (is the victim and/or others in household safe?).
- Are there weapons present?
- Any injuries to victim and/or witnesses.
- Location of assailant.
- Prior history of abuse by assailant.
- Any court orders or protective conditions in effect.
- Status of the offender within the criminal justice system.

Often, police dispatchers remain on the line to maintain contact with a victim in crisis, as well as to be able to relay important information to the responding law enforcement officer(s).

### **3.8.(d) Police Response /Arrest**

Many law enforcement agencies have developed and implemented protocols and policies for responding to domestic violence. As crisis responders, both victim sensitivity and extreme caution are vital to the safety and security of all involved.

- Immediately detect signs of injury to the victim(s) and seek emergency medical treatment, as needed.

- Interview victim and any witnesses.
- Separate from the offender
- Victim sensitivity is crucial.
- Statements can be considered as evidence.
- “Excited utterances” (excited statements made by victims or witnesses at the critical stage immediately following the arrival of law enforcement) may be allowed into court as exceptions to the rule against hearsay.
- Determine history of violence.
- Collect evidence.
- Statements from victim(s), witnesses(es), and alleged assailant.
- Observe demeanor of victim and alleged assailant.
- Photograph victim and crime scene.
- Take notes and sketches that describe the crime scene.

### **Pre-trial Release**

The safety of the victim and any children must be paramount in any decisions made concerning pre-trial release. Victim service providers should advocate to the court for measures that can help ensure victim security, including:

- Pre-trial incarceration.
- Higher bail/bond or denial of bail.
- Victim notification of defendant's release.
- Protective or restraining orders.
- Securing alternative safe housing for the victim and any children.

In some jurisdictions, post-charge diversion programmes are used to suspend case processing while the abuser undergoes treatment. Victim service providers must be aware of these programmes and able to explain them to victims, including: programme guide-lines; treatment modalities; and whether or no the defendant will be prosecuted upon "successful" completion of the programme.

### **3.8.(e) Prosecution and the Courts**

Prosecutors play a key role in holding domestic violence offenders accountable and assisting victims and witnesses in such cases. In 1992, the US National Council of Juvenile and Family Court Judges published two recommendations for prosecutors relevant to domestic violence:

- Prosecutors should initiate, manage and pursue prosecution in all family violence cases where a criminal case can be proved, including proceeding without the active involvement of the victim, if necessary.
- Prosecutors should have specialized family violence personnel and written procedure for prompt screening and charging in family violence cases.

These recommendations serve to place responsibility for prosecuting batterers on the criminal justice system, rather than on the victim; to provide specialized services for victims and witnesses; and to expedite criminal justice processes in domestic violence cases. Many prosecutors' offices today offer specialized units for domestic violence cases and victims, with personnel trained in the dynamics of domestic violence, legal issue specific to such cases, and victim sensitivity.

Furthermore, vertical prosecution units include prosecutors whose caseloads contain solely domestic violence cases. Some prosecutors have adopted "no drop" policies, in which cases proceed whether or not the victim chooses to cooperate. Prosecutors are often faced with victims who do not wish to testify due to a variety of factors, among them fear of retaliation.

tion. Offices with "no drop" policies rely on a number of measures to continue with cases, including:

- Subpoenaing the victim.
- Use of photographic and other visual depictions of injury to victims.
- Use of "excited utterances" from the crime scene, i.e. (excited statements made by victims or witnesses at the critical stage immediately following the arrival of law enforcement) .
- Testimony from family members or witnesses.
- Use of sworn statements of victims.
- Use of expert witnesses.

Many prosecutors have victim support programmes within their agencies, or rely upon services available from community -based victim service organizations. Services for victims of domestic violence may include, but are not limited to:

- Completing the intake process for a criminal case, which includes histories of the victim and any children: case history; court orders; victim/defendant description; information about the current incident, as well as about the history of violence; defendant information; and referrals.
- Referral to appropriate victim and social service agencies.
- Court preparation.
- Court accompaniment.
- Providing information about civil and criminal remedies.
- Providing counselling and support groups.

One of the most promising innovations in the legal system is the unified family court. The unified family court as "a court for families". A genuine unified family court has authority over child abuse and neglect; divorce, child custody and visitation, partner abuse; elder abuse; juvenile delinquency; termination of parental rights; and other family law matters.

"The primary advantage claimed for a family court system is the unification of all complaints, petitions, and case types within one case processing and management system in order to provide a more efficient, less costly and damaging, consistent and longer lasting resolution of the problems presented. By directing that all complaints or petitions must be resolved in one unified court, the opportunities for inconsistency and errors based upon inaccurate or incomplete information are greatly reduced".

### **3.8. (f) Orders of Protection**

Orders of protection is also called "restraining orders" -are court orders that forbid the abuser from doing certain things to victims, having contact with victims, and/or compelling abusers to comply with certain requirements.

While orders of protection can be issued at any time, it is helpful for victims to seek restraining orders as soon as possible after a domestic violence crime has occurred.

Each jurisdiction has different policies and procedures for issuing and monitoring orders of protection. In order to best assist victims, service providers should be aware of the following considerations:

- Is there a definition of "domestic violence victim" that precedes the issuance of an order?
- Which entity issues orders of protection, i.e. family court, municipal court, police department, or a combination depending on the circumstances?
- Domestic violence complaints filed in conjunction with requests for



protection are considered to be sworn testimony from the victim that can be utilized in court.

- Can the victim receive a copy of either the complaint or the order of protection,?
- Are vitttrns entitled to “exparte” proceedings, i.e. only one party is heard, with the defendant not required to be present?
- What is the difference between Temporary Restraining Orders (TROs) and Final Restraining Orders (FROs) in your jurisdiction?
- What evidence should victims bring (i.e. photographs documenting injuries, documentation of medical records and/or expenses, etc.)?
- What happens at the hearing?
- What types of relief are available (including no contact from defendant; prohibition of future act-of violence, intimidation or harassment; the defendant must physically leave the home; pay child support, restitution, and/or rent or mortgage payments; carry insurance for the victim and any children and pay all medical expenses; pay a fine to the state victim compensation fund; cannot have a weapon; must undergo counselling; must refrain from using alcohol or other drugs; and visitation conditions are determined)?
- Consent orders are strictly voluntary on the part of the victim, and cannot be coerced.
- Victims should receive information about what to do if any order of protection is violated.

### **Docketing**

More and more courts today are giving priority to domestic violence cases. In some jurisdictions, all domestic violence cases are heard on the same day, with the same judge, prosecutor and victim advocate present throughout all proceedings. The use of vertical prosecution units noted above

also contributes to the expediting of domestic violence cases. To reduce the potential for further violence, domestic violence cases should be given priority on court dockets.

Victims of domestic violence should have specific rights relevant to disposition, which include but are not limited to:

- Notification of the disposition.
- Opportunity to provide a victim impact statement to the court, and to: have any children also submit impact statements in measures that are commensurate with their age and cognitive development.
- Opportunity to request specific measures of relief.
- Securing a permanent restraining order that does not have to be reissued on a monthly or quarterly basis.
- Information and assistance regarding civil remedies.
- Information regarding restitution orders and enforcement.
- Notification of a convicted offenders' release from incarceration.

#### Monitoring Offenders

- Punishment.
- Punitive conditions.
- Financial assessments.
- Apology to victim.
- Community service.
- Non-Jail; Loss of-liberty confinement.
- Electronic monitoring.
- Intensive supervision.

- Rehabilitation.
- Mandatory treatment that is "batterer -specific" provided by professionals who are specialists.
- Model regulations for abuser treatment that bar any approach that "blames or intimidates the victim, or places the victim in a position of danger that is not appropriate".
- No couples counselling.
- Mandatory alcohol and other drug treatment, with a mandate of abstinence.
- Retribution / restoration.
- Restitution (including but not limited to direct and indirect for replacement costs of damaged property, medical and counselling bills, and attorney costs).
- Ongoing child support.
- Mortgage or rent payments.
- All payments should be made through the court or correctional institution.
- Protection.
- The offender should obey all outstanding civil protective or restraining orders.
- Forfeiture of weapons, particularly guns and rifles.
- Ordered to submit to warrantless searches of their persons or homes.
- Supervised at maximum intensity.
- Special protective obligations when children are involved, i.e. custody, visitation, etc.

## **Advocacy for Domestic Violence Victims**

There are thousands of staff and volunteers in communities across America who assist, support and serve victims of domestic violence. Often, these professionals provide a lifeline to women and children who desperately need assistance and direction, but are confused by the dynamics of their victimization, as well as by the very thought of leaving a violent environment and, in some cases, entering into the criminal justice system. The goals of advocacy for victims of domestic violence are generally to:

- Empower women with the ability to make significant changes and solve problems.
- Increase a victim's ability to make a successful transition from a battering environment to independence.
- Connect the victim-both in the short and long -term with community resources that provide support, encouragement, and assistance.
- Provide information and support throughout the criminal justice system and beyond.

### **3.8.(g) Victim Validation**

One of the most crucial skills a victim advocate must possess is the ability to validate the victim's feelings, experiences, and fears. Many domestic violence victims don't view themselves as victims, and fail to realise that domestic violence is a crime perpetuated against many other women, in addition to themselves. Some guidelines for domestic violence victim validation include the following:

- learn and practice effective communication skills, including nonverbal and verbal techniques.
- When interviewing the battered woman, do not ask for verification of her story from second parties.

- Assess the complete history of violence, including the current battering incident, as well as the first and worst incidents.
- When conducting this assessment, ask the woman directly to describe the violent acts and how she felt when and after they occurred, as well as how she feels now. Do not avoid speaking directly about the violence. Provide encouragement and support to the victim for sharing her feelings and experiences.
- Empathize with the victim and validate her feelings, stressing the criminal nature of the violence, as well as the fact that the victim is not to blame.
- Universalize the crime of domestic violence, pointing out the scope and prevalence of such crimes that cut across socio-economic, racial, cultural and geographic lines.
- Provide information and referrals for continued support and assistance, including local, state and national resources.
- Develop a plan for follow-up contact, support and assistance from you, your agency, or allied community service or criminal justice agencies.
- Affirm the fact that the victim is not alone, and that there are people and programmes available to assist and support her.

### **3.8.(h) Developing a Safety Plan**

If and when a victim is able to leave her battering environment, it is essential that she has a "safety plan" to increase her opportunity for a successful departure. Advanced planning is crucial. Concerns and actions to be addressed include the following:

- Does she have family and friends with whom she can stay?
- Would she find a protective or restraining order helpful?

Can a victim advocate safely contact her at home? What should the advocate do if the batterer answers the phone?

(Space for Hints)

Does she know how to contact emergency assistance (i.e. 911)?

If she believes the violence might begin or escalate, can she leave for a few days?

Does she know how to contact the shelter (if she doesn't, provide her with information for future use)?

Does she have a neighbour she can contact, or work out a signal for assistance, when violence erupts or appears inevitable?

If she has a car, can she hide a set of keys?

Can she pack an extra set of clothes for herself and the children, and store them - along with an extra set of house and car keys - with a neighbor or friend?

Can she leave extra cash, chequebook or savings account book hidden or with a friend for emergency access?

Can she collect and store originals or copies of important records such as birth certificates, social security cards, her drivers' license, financial records and medical records (for her children and herself)?

Does she have a concrete plan for exactly where she should go and how she can get there, at any time regardless of when she leaves?

Does she have a disability that requires assistance or a specialized safety plan?

Does she want access to counselling for her children or herself?

Neither victim advocates, criminal justice professionals social service providers, nor allied professionals operates in a vacuum when it comes to providing quality services to victims of domestic violence. There are many professionals who have responsibilities to domestic violence victims.

### 3.9. CHILD LABOUR

India has all along followed a proactive policy in the matter of tackling the problem of child labour. And always stood for constitutional, statutory and developmental measures that are required to eliminate child labour. A comprehensive law, the child labour (Prohibition and Regulation) act, 1986 prohibits employment of children in some other areas. The act prohibits employment of children in certain hazardous occupations and process and regulates their employment in some other areas. The act prohibits employment of children in 13 occupations and 57 processes. To bring forward national laws and regulations on par with the international labour standard. India has so far ratified six I.L.O conventions relating to child labour and related matters,

The National Policy on Child Labour was formulated in 1987 which apart from requiring enforcement of legal provisions to protect the interest of children envisages focusing of general development programmes for the benefits of child labour and projectbased plans of action in areas of high concentration of child labour. The Government realizes that investment for the physical, mental and emotional and political stability of any country. Unless this development is achieved at the appropriate juncture all of humanity, most fundamental problems will remain long term problems. Needs and rights of children should become the focus of attention as far as developments of children are concerned realizing that development had initiated two specific plans of action viz. (i) one National Child Labour Projects (NCPLs) and (ii) grants -in Aid -Scheme for the benefit and welfare of child labourers.

The National Child Labour Projects (NCLP) has been set up in different areas to rehabilitate child labour. A major activity undertaken under the NCPL is the establishment of special schools to provide formal/non formal education, vocational training supplementary nutrition etc., to children withdrawn from employment. The objective is to mainstream the maximum number of children into formal school. National Child Labour Projects (NCPLs) are under implementation in 100 districts spread over 13 States in the country to cover around 2.11 Lakh working children.

Under the scheme of Grants -in aid, Voluntary Organisations are being financially assisted to the extent of 75 percent of the project cost for taking up welfare projects for working children where they are provided with non formal education, supplementary nutrition, health care and vocational/ skill training.

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During the Tenth Plan, the main thrust was to eliminate child labour from hazardous occupations through a focused and convergent effort and progressively move towards complete eliminate of child labour from other occupations. The efforts to eliminate child labour would be further synergies and converged with the schemes of Sarva Siksha Abhiyan being implemented by the Ministry of Human Resource Development. Similarly convergence with the anti -poverty programmes of the Department of Rural Development at the district level will form an important part of the strategy to eliminate child labour.

### 3.10. CASTE ATROCITIES

The figures for rape of dalit women went up more alarmingly. Once it was hoped that capitalist development would lead to a weakening of caste and other feudal ideologies. Notably Haryana and Gujarat, and to a lesser extent Tamil Nadu are states where capitalism has thoroughly replaced feudal land relations.

Some of the family members of the murdered dalits in Hararyana have embraced Buddhism in a public ceremony. Doubtless, escape fro'm a barbaric social system by conversion to a more human religious order represents hope in a hopeless world for those oppressed for centuries. Whether this escape will be anything more than symbolic is another matter altogether.

### 3.11.COMMUNAL RIOTS

One can put communal violence under two categories: 1) Communal violence which is carefully planned executed with political or state support or at least with subtle state connivance. Such violence results in great losses of lives as well as properties. It goes on for a long period of time and is deliberately not controlled unless the stated goal is achieved.

#### Check Your Progress

11. Examine the Position of Child Victims in the Criminal Justice System.
12. Examine Child Sea Tourism
13. What is Child Abuse.
14. What is incest.
15. Domestic Violence - Effects on Children.
16. Examine the Police Response on Domestic Violence.
17. Examine Child Labour.



The second category of riots takes place as a result of constant communal propaganda. It is important to note that absence of communal violence does not mean absence of communal propaganda goes on riots or no riots. Thus communal forces keep on poisoning the minds of people and keep on promoting animosity between the communities. And so skirmishes continue.

### **State Accountability in Communal Riots**

It is not as if the existing law of the land is silent about the duties of the state in times of communal clashes. The Criminal Procedures Code does contain provisions that extensively empower civil and police officers to use force and even take the assistance of armed forces, to control 'public disorders' the amended Indian Penal Code includes the instigation of hatred against communities as a grave crime, apart from offence like rape, arson, dacoit and murder. However, there is no comprehensive law in India's status books that, encodes in unambiguous details the powers and duties of state authorities to prevent and control communal violence to protect victims to organize, as the inalienable rights of the survivors relief compensation and rehabilitation.

In the event of the actual out break of communal violence, the law already empowers local police and civil authorities adequately to mobilize and deploy the legitimate force of the state including the armed forces to control and protect innocent citizen. However we have repeatedly witnessed that officers abjectly await political directions before they exercise their powers, and their wanton delays extract a reprehensible toll of many more innocent lives and properties. Repeated commissions of enquiry have also established a consistent pattern that where force is used by the state, it is used highly disproportionately against the minorities even in the majority of cases where they are clearly the victims. Increasingly, we have moved from individual aberrations to a more generalized and dangerous institutional collapse.

There should be an independent standing commission to periodically fix rates of compensations for loss of life, limb, sexual assault, and destruc-

tion of shelters and livelihoods and in all disasters both human and natural. These rates should be binding as a floor or minimum standard disasters on all governments, so as to not permit openly discriminatory policies such as those applied by the Gujarat government to the survivors of the 2001 earthquake and 2002 carnage respectively.

The consistent collapse of criminal justice to punish the guilty and the deliberate, and comprehensive subversion of justice systems by the Gujarat state government, underlines the urgency to establish extraordinary systems for recording complaints investigation, evidence prosecutions and trial for all crimes committed in communal riots. The machinery for each of these must be autonomous and uncompromisingly protected from political influences, including fast track special courts and should also incorporate provisions for the protection of witnesses. The police officials responsible for the control of the riots should in no case be charged with investigation. A failed investigation leading to summary closure without trial or acquittal in the trial court should be recorded as a demerit of the investigating officer. Minimum punishment must be prescribed for crimes in riots and the scale of punishment significantly higher than for the same crimes committed in normal times. The law should create spaces for countervailing oversight institutions of civil society.

Women and girls are among the most vulnerable of the survivors of communal violence and their bodies have long been brutally abused as battlefields in the war between bigots of both communities. There must be special cells run exclusively by women to assist and counsel these women survivors of violence and to record and investigate their complaints. Circumstantial rather than medical evidence should suffice to establish sexual assault. Trials must be conducted in camera, protecting the confidentiality of the victims of sexual violence in riots.

Today in India, we live in troubled times, in which one of the two major political formations competition for political leadership of the nation and many state governments, regards it legitimate to use communal imagery, propaganda, mobilization and political discourse to demonize minorities,

breed insecurities and terrorize segments of people to acquire state power. In such times, this proposed law is imperative not because it will in itself and the politics of hatred. But in those dark hours of our history when the country and its people are convulsed and imperiled by the politics of hatred it will lay down legal standards of responsible, impartial, humane state action.

### **3.12.GENOCIDE**

Genocide is defined by the Convention on the Prevention and Punishment of the Crime of Gerlocide (CPPCG) Article 2 as "any of the following acts committed with intent to destroy in whole or part, a national, ethnic, racial or religious groups, as such: Killing members of the group; Causing serious bodily or merltal harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group."

#### **Coining of the term genocide**

The term "genocide" was coined by Raphael Lemkin (1900-1959) a Polish Jewish legal scholar in 1943 from the roots genos (Greek for family tribe or race) and cide (Latin -Occidere or cideo to massacre.)

Lemkin said about the definition of genocide in its adoption for international law at the Geneva Conventions:

Generally speaking genocide does not necessarily mean the immediate destruction of a nation except when accomplished by mass killing of all members of a nation. It is intended rather to signify a coordinated plan of different action aiming at the destruction of essential foundation of the life of national groups, with the aim of annihilating the groups themselves, The objectives of such a plan would be the disintegration of the political and social institutions of culture, language, national feelings, religion and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even 'the lives of the individual belonging to such groups.

Lemkin's Original genocide definition was narrow, based mainly on the Holocaust and the Armenian Genocide as it addressed only crimes against "national groups" rather than "groups" in general. At the same time it was broad in that it included not only physical genocide but also acts aimed at destroying the culture and livelihood of the group. According to the Swiss Professor Julia Fribourg the term "genocide" includes displacement of national groups from their homelands with an aim of destroying their cultural and habitation grounds.

### **Genocide as a Crime Under International Law**

In the wake of the Holocaust committed by the Nazis. Lemkin successfully campaigned for the universal acceptance of International Laws. defining and forbidding genocide. This was achieved in 1948 with the promulgation of the Convention of the prevention and punishment of the crime of genocide.

The CPPCG was adopted by the UN General assembly on 9 December 1948 and came into effect on 12 January 1951. (Resolution 260 (III)). It contains an internationally recognized definition of genocide which was incorporated into the national crime legislation of many countries and was also adopted by the Rome Statute of the International Crime Court. the treaty that established the International Criminal Court. (ICC). The Convention (in article 2) defines genocide as any of the following acts committed with intent to destroy in whole or in part a national ethnic racial or religious.

1. Killing members of the group
2. Causing serious bodily or mental harm to members of the group
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
4. Imposing measures intended to prevent births within the group
5. Forcibly transferring children of the group to another group.

The first draft of the convention included political killing but the USSR did not accept that actions against groups identified holding similar political opinion or social status. that would constitute genocide if carried out against an ethnic group was genocide so they were removed in a political and diplomatic compromise.

### **Criticisms of the CPPCG**

Much debate about genocide revolves around the proper definition of the word "genocide". The exclusion of social and political as targets of genocide in the CPPCG legal definition has been criticized by some historians and sociologists for example M. Hassan Kakar in his book, *The Soviet Invasion and the Afghan Response, 1979-1982* argues that the international definition of genocide is too restricted and that it should include political groups or any group so defined by the perpetrator and quotes Chalk and Jonassohn: "Genocide is a form of one-side mass killing in which a state or other authority intends to destroy a group as that group and membership in it are defined by the perpetrator."

### **3.13.INTERNATIONAL PROSECUTION OF GENOCIDE**

All signatories to the CPPCG are required to prevent and punish acts of genocide, both in peace and wartime, though some barriers make this enforcement difficult. In particular, some of the signatories -namely, Bahrain, Bangladesh, India, Malaysia, The Philippines. Singapore, the United States, Vietnam, Yemen, and Yugoslavia -signed with the proviso that no claim of genocide could be brought against them at the International Court of Justice without their consent. Despite official protests from other signatories (notably Cyprus and Norway) on the ethics and legal standing of these reservations the immunity from prosecution they grant has been invoked from time to time, as when the United States refused to allow a charge of genocide brought against it by Yugoslavia following the 1999 Kosovo War.

### 3.14.NUREMBERG TRIALS

The Nuremberg Trials is the general name for two sets of trials of Nazis involved in World War II and the Holocaust. The trials were held in the German city of Nuremberg from 1945 to 1949 at the Nuremberg Palace of Justice. The first and more famous of these trials was the Trial of the Major War Criminals Before the International Military Tribunal or IMT, which tried 24 of the most important captured (or still believed to be alive) leaders of Nazi Germany. It was held from November 20, 1945 to October, 1946.

Determining which historical events constitute genocide and which are merely criminal or inhuman behaviour is not a clear-cut matter. Furthermore, in nearly every case where accusations of genocide have circulated, partisans of various sides have fiercely disputed the interpretation and details of the event, often to the point of promoting wildly different versions of the facts. An accusation of genocide is certainly not taken lightly and will almost always be controversial. Revisionist attempts to deny genocides is, in some countries, penally repressed.

#### **Stages of genocide and efforts to prevent it**

According to President of Genocide Watch, Gregory Stanton, genocide develops in eight stages that are "predictable but not inexorable". The FBI has found somewhat similar stages for hate groups.

It is worth noting that while some governments follow certain of the "recommendations" below, in other jurisdictions they are actually illegal. For instance, in the United States, the First Amendment forbids the banning of so-called "hate speech".

	Stage	Characteristic	Preventive Measures
1.	Classification	People are divided into "us and them"	"The main preventive measure at this early stage is to develop universalistic institutions that transcend.. divisions".
2.	Symbolization	"When combined with hatred, symbols may be forced upon unwilling members of pariah groups"	"To combat symbolization hate symbols can be legally forbidden ... as can hate speech"
3.	Dehumanization	"Dehumanization overcomes the normal human revulsion against murder"	"Hate propaganda should be banned, hate crimes and atrocities should be promptly punished".
4.	Organisation	"Genocide is always organized.. special army units or militias are often trained and armed..."	"To combat this stage, membership in these militias should be outlawed".
5.	Polarization	"Hate groups broadcast Polarizing Propaganda..."	"Prevention may mean Security protection for moderate leaders or assistance to human rights groups".
6.	Identification	"Victims are identified and separated out because of	"At this stage, a Genocide Alert must be called" their ethnic or religious identity".
7.	Extermination	"It is "extermination" : to Killers because they do not believe their victims to be fully human"	"At this stage, only rapid and overwhelming armed intervention can stop genocide. Real safe areas or refugee escape corridors should be established with heavily armed international protection"
8.	Denial	"The perpetrators... deny they committed any crimes."	"The response to denial is Punishment by an international tribunal or national courts.

### **3.15.SUMMARY**

(Space for Hints)

Social Justice for woman is the key stone of the Indian constitutional Law. It is there to improve the status of women. Here the inherent nature of many social Legislation is confusing. So it should be made simple. An ordinary man should be able to understand those law. There should be deliberate and planned effort is necessary to change the attitude of the people of India. Female Population in the form of organization should participate. It should be encouraged for the successful implementation of laws. For this to happen education for women is very essential. Special emphasis should be given to Legal education. Women should be taught about their Legal rights. It can be done even at the School level. Free Legal aid should be provided Financial independence for girls should be ensured by parents and by Governments.

### **3.16. KEYWORDS**

1. Social Justice - Justice for all the People - men and women in India.
2. Victim - Who is the target of a crime.
3. Genocide - indiscriminate killing.
4. Order of Protection - An order from the court to protect the women from Domestic violence.

### **3.17. Answer to Check Your Progress**

1. Refer Para 3.2.
2. Refer Para 3.2. (a)
3. Refer Para 3.3.
4. Refer Para 3.3 (a)
5. Refer Para 3.6 (d)



6. Refer Para 3. 6 (f)
7. Refer Para 3.6 (h)
8. Refer Para 3.6. (i)
9. Refer Para 3.6 (j)
10. Refer Para 3.6. (l)
11. Refer Para 3.7.
12. Refer Para 3.7 (b)
13. Refer Para 3.7 (c)
14. Refer Para 3.8 (a)
15. Refer Para 3.8 (b)
16. Refer Para 3.8. (d)
17. Refer Para 3.9.

### **3.18.MODEL QUESTIONS**

1. Describe about the Victims of Traditional Crimes.
2. Explain the details about the Domestic Violence. Give your opinion.
3. Pictorise or Focus on Women and Child Victim.
4. Write an essay about the present condition of Child Labour in our country. What are the laws available to wipe out child labour problems?
5. Child Labour is a growing menace in our country. Do you agree?
6. Write notes on a) Sexual Assault b) Sex Tourism c) Child Abuse d) Genocide e) Communal Riots

## **UNIT - II**

### **LESSON 4**

#### **ABUSE OF POWER : ORGANIZED VICTIMIZATION**

##### **INTRODUCTION**

Since the beginning of time persons with greater strength have (dominated the weak. Tribes with more warriors pillaged and plundered those with fewer fighters. Nations with more military might conquered nations with less military might. History has given us numerous examples of how powerful leaders have been able to subdue their neighbours and impose their will on those they vanquished. Sometimes this has meant taking their property and enslaving their populations. Other times it has meant changing a culture by altering its religion, language, and traditions. In some extreme cases, this has meant destroying outright all the members of a given group -genocide. In the absence of law or moral standards, "might meant right". As countries formed and became economically interdependent on each other, these practices gradually became unacceptable. Rules were made by those who had the power to govern by force. As wars were won and lost, and the numbers of victims shocked the hearts and minds of the conquerors, the conquered and the bystanders, rules of warfare evolved to make the settling of major disputes less lethal and more civilized. As nations grew and formal relationships developed; international laws were promulgated to ensure that future armed conflicts would be fought within specific guidelines recently known as the Geneva Conventions. Today most civilized countries are signatories to these Conventions. And, there are laws that provide sanctions against nations that would transgress these laws. The League of Nations and then the United Nations represent an attempt to regulate the activities of all member nations. This was accomplished by enacting the Universal Declaration of

Human Rights as its standard for all nations. The controlling agency is the UN's Security Council, which mandates punishment for those nations that violate these laws. Why then do we continue to see abuses or power perpetrated by civilized nations upon special segments of their own populations?

This term, abuse of power, is relatively recent and is about 10 years old. Previous terms used for this phenomena included genocide, terrorism, mass murder, holocaust, extermination of people, etc. Abuse of power focuses, not just on the result of the offenders, but also on the responsibility of those with power". Abuse of power is a current continuing phenomenon it is not ancient history. One can read in any international newspaper something about ongoing abuses of power in different parts of the world. One of the dilemmas about documenting and studying abuse of power is the risk of getting stuck in the subjective descriptions of horrific cases and events (Sahetapy, 1995).

## **UNIT OBJECTIVES**

To Know about, "Power" and its abuse

To know about "Organized" and its plan to achieve its object.

To know about "Victimization" - and its degree injure.

All these we are going to study in its relevant context.

## **UNIT STRUCTURE**

Introduction

Unit Objective

Unit Structure

4.1. Definitions for certain Specific words

4.2. Theories

- 4.3. Implementation of the U.N. Declaration of of Basic Principles of Justice.
- 4.4. Private Prosecution
- 4.5. The trial
- 4.6. Crime Prevention
- 4.7. Summary
- 4.8. Key words
- 4.9. Answer to check your Progress
- 4.10. Model Questions

#### **4.1.DEFINITIONS FOR CERTAIN SPECIFIC WORDS**

Before embarking on a discussion of this problem, the words power, abuse, organized and victimization must be clarified.

First, **the word abuse** refers to behaviour that violates an accepted norm or standard either informal or formal in the use of might to injure others (Dussich, 1991). The standard usually recognized is Human Rights. These abuse of power behaviours are clearly proscribed as wrong, yet they are not always punished by any higher authority. Some of these violations in the use of power transgress existing international, national or moral codes of conduct and are deemed unacceptable by the larger community of nations.

Second, **the word power** in this context refers to the ability of a person or a group of persons, who by virtue of their positions, wealth or possession of arms can inflict lethal and nonelethal injury upon others with impunity. At one end of this continuum is minor non-physical coercion through the use of fear; while, at the other end is the extreme form, genocide.. "Power is the capacity to coerce others to do something they would not otherwise do" (Haley, 1991:13).

Third, **the word organized** refers to a planned activity engaged in by a collectivity of persons to achieve a common goal. This might refer to a spontaneous group action like with a lynch mob or one that is decided upon over the period of days, weeks, months, or even years, like with "ethnic cleansing". The extent of organisation may involve an informal structure like two friends or a formal structure like a national army.

Fourth, **the word victimization** refers to the injury, which results from the use of force upon human beings, animals or the environment. This injury may be psychological, physical or cultural. The word "victimization" also implies a degree of injury, which is considered to be significant to most observers (such as with the "collective trauma" of large groups of people).

The definition of "Victim" in the Abuse of Power section of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, states that these are "...persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationality recognized norms relating to human rights".

Thus, the composite definition of "Abuse of Power: Organized Victimization" is the intentional use of might that violates an international norm or standard which results in significant injury, by a person or persons. In recent years this term 'abuse of power', has been used for a wide range of victimisations, such that macro abuses must be distinguished from micro abuse. The former, referring to the death, injury or damage of significant magnitude; the latter referring to only a few, even one victim. However, in its most frequently used form, the common element in abuse of power events is the presence of some form of armed might used in the violation of a standard on defenceless persons. This means the victims were not offensive; thus, the aggressors could use "self-defense" as the reason for their acts. Since the most severe form of abuse of power is genocide, it is instructive to reflect on the definition of this phenomenon; "the intentional extermination of a population defined as a race or a people" (Kornblum, 1994)

## Examples

The earliest forms of abuse of organized power victimizations were prehistorical and for the most part, escaped accurate documentation. Some anthropologists have documented the existence of major battles where large numbers of people, often unarmed non-combatants from one group, were killed or enslaved by large numbers of armed combatants from another group (Haviland, 1975) History mentions the names of **Genghis Khan**, Attila the Hun, Sh-aka th'e Zulu, Caligula, to mention just a few who have abused power. They were not brought to justice, yet their atrocities were noted by historians.

The most notorious events occurring in recent times have covered the globe involving widely different entities as Offenders and different persons as Victims,

A brief list of some of the more notorious recent examples of macro abuse of power are:

- Australia's extermination (and therefore a true genocide) of the aboriginal inhabitants of Tasmania, the last one died in 1876 (Haviland, 1975; Bendeiech, 1998);
- Young Turk; Ottoman government attempted genocide of the Armenian people in 1915 to 1916; in Turkey.
- British and Dutch soldiers massacre of thousands of members of African tribes like the Hottentots (Kornblum, 1994:435);
- Adolph Hitler's Nazi Germany's attempted genocide killing approximately six million Jews, 2 million Russian civilians and 400,000 Gypsies in Europe from the 1930s to the 1940s (Haviland, 1975; Kornblum, 1994)
- Japan's massacre of approximately 300,000 Chinese war prisoners and civilians at Nanjing in 1937 (Xu, 1995);

- Royal Canadian Mounted Police, oblate missions and the Hudson Bay Company forced the demise of the entire Inuit people who lived in the "Barren Grounds" West of the Hudson Bay during the 1950s (Farley, 1959);
- White South African policy of apartheid, which resulted in thousands of Black South Africans being killed from about 1920 to 1990 (Kornblum, 1994)
- **Saddam Hussein's** Iraq poison gas massacre of Kurdish villagers in 1988 (Haviland, 1975);
- Slobodan Milosevic's and Radovan Karadzic's Serbian ethnic cleansing which resulted in approximately 280,000 Croatian and Bosnian people during the period of 1992 and 1995;
- Hutu majority extremists killed an estimated 800,000 Tutsis and moderate Hutus in Rwanda in 1994 (Reuters, 1998);
- Khmer Rouge mass killings of approximately 2 million Cambodian elite from 1975 to 1979 (Associated Press, 1998);
- Namibian Government forcing of the Kung people to live on land that could not support them causing their extermination during the 1970s and 1980s (Haviland 1975);
- The "dirty war" and the "disappearances" of people in Argentina, Chile and Uruguay in the last 20 years (Shalala, 1995; Reuters, 1998; Sims 1998)
- Algeria's current massacres of approximately 40,000 of its own people by members of the Islamic Salvation Front terrorist groups who have been trying to oust the government since 1994 (Irish Times, 1998).

It is important to mention here that micro abuse of power includes such victimizations as child abuse, spouse abuse, school bullying, etc.

## 4.2. THEORIES

The three most often cited theoretical perspectives on international conflict are the functionalist perspectives on international conflict perspective and the social psychological perspectives. The functionalist perspective focuses on the inevitable product of world disorganisation. Each nation has different self interests and as these interests collide with one another, disputes arise which have traditionally been settled by war. The conflict perspective focuses on economic and political exploitation. Essentially, the powerful capitalist nations obtain labour and raw materials from the underdeveloped nations and thus reap vast profits. This perpetuates the flow of resource's from third world countries to the industrialized countries. Conflicts arise when this world order is challenged. The social psychological perspective considers both individual and cultural issues. Thus instinctive as well as learned aggressiveness produce a sense of ethnocentric territoriality, which who threatened, produces armed warfare (Coleman and Creasey, 1993).

Because Abuse Of Power (AOP) represents such complex social phenomena; and because it has never been measured empirically, it is suggested that a model be used which would allow a researcher to (a) become aware of the multivariate character of this AOP phenomena, (b) have a heuristic tool which can facilitate the measurement of macro AOP data; (c) enhance the understanding of the three dimensional reality each AOP events; (d) permit a more accurate interpretation of data on the forming of conclusions concerning AOP research; and (e) encourage the creation of clear realistic policy formation to prevent, and respond to, future AOP events. The model proposed is the "Problem Moment Continua" developed in the measurement of coping skills some seventeen years ago (Dussich, 1985). The model freezes an event in time so that each separate variable can be recognised and measured. This not only allows the researcher to see the phenomena more clearly, but also allows one to move the event into different time periods and facilitate fine changes in the character of the dynamics of abuse of power at different points in time.



The basic model is made up of numerous continua (the number depending on the researcher's list of variables). Each continuum ranges from a to 10 and is marked at a level which accurately reflects what the data show. For a visual representation of the model, one should place each continuum in an asterisk-like form around a common centre. This centre represents the moment of the event (see the model at Dussich, 1985).

Conclusions ...

The challenge here is to

- a) Propose policy that is based on an accurate understanding of the causes and dynamics of abuse of power;
- b) Make policy so effective that it reduces the abuse of power phenomenon to an acceptable level; and,
- c) Recognise that victimology has a significant responsibility to conduct empirical research and develop theories that promotes greater understanding and leads to improvement in the global quality of life.

#### **4.3. THE IMPLEMENTATION OF THE UN DECLARATION OF BASIC PRINCIPLES OF JUSTICE (on Victims of Crime and Abuse of Power in Bulgaria)**

For many years it was claimed that the Bulgarian legislators provided adequate protection of the victim and this is a traditional achievement of Bulgarian legislation. However, in Bulgaria we had totally forgotten the victim for a long time. Despite the democratic changes after 1989, legislators paid more attention to the offender than to the victim.

While some basic protection for the victim of crime has traditionally been provided, we have not achieved the full implementation of the UN Declaration of Basic Principles of Justice on Victims of Crime and Abuse of Power. Many of the recommendations of the UN Declaration of Basic Principles of Justice on Victims of Crime and Abuse of Power were and still are

"too luxurious requirements", according to our domestic policy-makers, and therefore not applicable to the Bulgarian reality. Nevertheless some positive developments can be pointed out.

In the following a brief description of the traditional position of victims of crime in Bulgaria will be given. Next, recent changes in the legal status of victims of crime are presented. The article closes with a brief discussion of some of the remaining shortcomings of the system.

### **Traditional provisions for victims of crime**

#### **Who is a victim?**

The basic quality of the victim is that he ! she is a participant in the social relations directly affected by the crime. A victim can be a natural person, a legal person or the state. Collective bodies cannot be victims because of the lack of legal personality. In this situation there will be numerous individual victims.

Only the subject whose rights explicitly indicated in the corpus delicti are threatened or harmed can be a victim. It is not necessary for the victims sustain real damages in order to be considered a victim. He! she is an object of protection even in cases of attempts as well as in cases of preparation to the crime.

In numerous codifications the legislator has specified that certain qualities and states of the victim can lead to a more severe penalty. For example some personal qualities such as age (very young or very old) some social qualities such as nationality, religions, race as well as some special states as illness, unconsciousness, helplessness.

## **4.4. PRIVATE PROSECUTION**

According to the Bulgarian Criminal Procedure Code the victim is entitled to Participate in the trial as a witness a private complainant and plaintiff. He / She defends his/her rights personally or with the help of an attorney. The person who has sustained material or immaterial damages by the

crime that is being prosecuted by the Public Prosecutor has the right to take part in the trial as a private accuser. After his death this right passes on to his legal heirs.

The person who has suffered from the crime that is prosecuted on the ground of a complaint by the victim could raise and uphold an accusation as private complaint. In order to provide better protection of the victim the law permits a civil claim to be lodged both against the accused and against other persons who carry civil liability for the damages caused by the crime. Because of the low rate of detection of crime and of sentenced persons a significant part of the victims cannot avail themselves of their rights in accordance with the relevant procedure. The extremely long, torturous trial even causes a secondary victimization.

### **Dignity and respect**

We have to admit that the only special provisions somehow related to treatment of the victims with compassion and respect for their dignity is Art 99 of the Criminal Procedure Code. According to this provision minors shall be interrogated as witness in the presence of pedagogue or psychologist and where necessary also in the presence of the above mentioned persons if the respective body finds this necessary. With permission of the body conducting the interrogation these specialists may put questions to the witness.

### **Recent Developments**

During the last decades all over the world the policy-makers, criminal justice practitioners and criminologists have become more and more concerned with the victims position in the criminal process and with protecting the victims interest. In recent years this favorable climate expanded to the former socialist countries, including Bulgaria. Trying to follow this tendency Bulgarian legislators executive judiciary and scientists have concentrated their efforts to protect the right of the victims (real and potential).

## 4.5.THE TRIAL

(Space for Hints)

The criminal procedure has been changed recently. The three -instance court system has been adopted. It is highly controversial whether this long procedure the best way for securing the victim rights. However some position steps have been taken speeding up and optimizing the preliminary proceedings and admitting evidence gathered by special intelligence. The latter must however be in accordance with the basic principles of democratic state, the rule of law and human rights. In this way the possibilities to establish the perpetrator increase and the interest of the victims could indeed be better protected.

### Witness protection

Protection of the witness during the criminal proceeding has recently been introduced. According to Art 97a of the Criminal Procedure Code "the bodies of the preliminary proceedings or the reporting judge shall, upon request or with the consent of the witness take measures for his / her protection should there be sufficient grounds to presume that due to the testimony there has arisen or may arise real danger to the life, health or the property of the witness, his relatives of ascending or descending line, brothers, sisters or spouse". The protection shall be provided by means of keeping his/her identity secret (so called anonymous witness) and providing guards. The legislator considers that the witness will be motivated to testify when he/she does not risk becoming the next victim. The next step for the government is to provide funding and elaboration of the programmes for the protection of the witnesses and persons having collaborated with the judiciary.

### Victim assistance

A new Ministry of Interior Act entered into force at the beginning of 1998. This Act provides for the establishment of the Constabulary, a unit that is new to the Bulgarian system. The Constabulary operates within the framework of the Ministry of Interior. The assisting of crime victims as well as the citizens in risky situations, safeguarding the public order, detection and elimination of crime determinants (reasons and conditions for committing crime) are among the priorities of this unit.

#### Check Your Progress

1. Give some examples of Macro abuse of Power.
2. What are the three theoretical Perspectives on International Conflict.
3. Explain Private Prosecution.
4. Examine Witness Protection.

Sareetha - Vs- Venkata Subbaiah (AIR 1983 A.P.356). In this case saritha was an actress. Against her will her husband wanted to have a child and compelled her. He went to the court. The case went to the High Court of Andhra Pradesh. The High Court said that a woman has a right over her body and person she has got a right. When to allow her husband and when to have a child. It also said Hindu Marriages Act section 9 is Ultra Virus of the Constitutional law of India. (Art 14 and 21)

Justice P.A. Chowdhary expressed that the effect of decree of restitution of conjugal rights is to coerce the unwilling party to have sex against that person's consent and free will thus allowing one's body to be used as a Vehicle for another human being's creation. This violates the right to privacy of the individual also.

At present, some NGOs are very active in victim assistance. They successfully compensate the delay or the lack of governmental actions. Worthy of mentioning is the ANIMUS Association, a NGO for the protection of women. The activities of ANIMUS include women as victims of crimes such as domestic violence and sexual harassment. A telephone hotline has been opened and now every crime victim can express her psychological problems and receive specialized help and advice. Together with the local government of Sofia, ANIMUS plans to soon open centre for the rehabilitation of women-victims of violence.

Another NGO is the Assistance Centre for Torture Survivors (ACET). It has been working actively since the beginning of 1997. The medical specialists provide psychological, psychiatric and other qualified support to the victims of torture (refugees, prisoners, etc.) and their families.

### **Informal mechanisms**

A particularly important part of the activities of some governmental bodies and NGOs is devoted to the elaboration and experimentation of a model of mediation as an alternative to the traditional justice system. Mediation strengthens the role of the victim and satisfies the victims' needs, both material and emotional. Within the restorative justice model he / she

will be treated with real compassion and respect for his/her dignity. Undoubtedly, access to justice and fair treatment are essential victim's rights but they are not enough. The 21<sup>st</sup> century needs something more-faster, more efficient, less expensive procedures. Relevant responses are mediation, reconciliation, arbitration, reparation, negotiation programmes family and community group conferences etc. Guided by the principle that the restoration and restitution is of significant importance, in Bulgaria we have started discussions and pilot projects on mediation as an alternative to the trial. Presently, these efforts have been met with resistance -mainly from the judicial society, which strongly defends its interests, but we are optimists.

#### **4.6.CRIME PREVENTION**

Some progress in the crime prevention and victim related policies has already been achieved. An important element of the state policy is the protection of citizens from victimization. Victim logical research identifies certain groups of people with a higher risk of becoming victims of crimes (women, children, disabled persons) and the typical mistakes in their behaviour. Using this information, comprehensive recommendations can be developed for potential victims, thereby reducing the likelihood of victimization. Mass media play an important role in pursuing the policy of protection of the citizens from victimization. They have launched various information campaigns on how to avoid violent crimes and financial fraud. A very good example is the campaign related to the recent Bulgarian currency denomination. Mass media pay special attention to the children as well. There are specialized educational TV broadcasts on avoiding children victimization. More than ten NGOs have developed projects designed to prevent street children and children in especially difficult circumstances from becoming crime victims.

In the National Strategy for Combating Organized Crime, the fight against organized crime and corruption was declared a first priority of the Government. New crimes have been penalized and more severe sanctions have been introduced in our Penal Code. It is difficult to say that this prevention.

## **Education**

Nowadays we are paying more attention to the problems of victims in the educational process. The respect of human rights as well as the victim rights is not an inherent instinct of the personality and has to be shaped under the influence of the outside reality. We consider that this education has to begin in the primary schools or even earlier and should continue throughout the child's education, while turning into a life-long education of the adult person. Presently, not only pupils and students are involved, but also police and prison staff, journalists, barristers, magistrates, members of the armed forces, medical practitioners, social workers, civil servants. Special programmes and courses have been developed and a lot of training workshops, colloquia, conferences, etc., have taken place.

## **Shortcomings**

Of course, the Bulgarian victim-relating policy has many shortcomings. Although the idea of victim compensation through public funds is not alien to the existing legislation, it is not fully realized. The State Liability Act for Damages Caused to Citizens of 1988 provides for special compensation of persons who are victims of illegal actions by the state authorities, including judicial authorities, but it is only a partial decision. Based on economic difficulties, the Government of Bulgaria has not implemented the relevant part of the UN Declaration and has not yet signed the Council of Europe Convention on the Compensation of the Victims of Violent Crimes. The economic difficulties are a good excuse, but it is high time something more was done for the crime victims. When the state is not in a position to guarantee the security of its citizen (Art.5 of the European Convention of Human Rights) and they become crime victims, the state should compensate them. And this will be an additional stimulus to be more efficient in prosecuting the offenders.

The Government of the Republic of Bulgaria has always declared that the protection of the interests of the victims of crime is one of the fundamental functions of criminal justice and it is doing its best to implement the

measures, contained in the United Nations and the Council of Europe instruments on assistance to victims and the prevention of the victimization. It is high time that more concrete measures are undertaken.

#### **4.7. SUMMARY**

In this lesson we have learned what is called “Power”. What is meant by “abuse” and organised; and victimization. We have studied theoretical perspectives on international conflict. The social psychological perspective considers both individual and cultural issues. We have seen what is ANIMUS Association - this helps women victims of crime such as domestic violence and sexual Harassment.

#### **4.8. KEY WORDS**

Power	-	It is the capacity to compel others to do something.
Organised	-	Planned activity engaged by group of persons to achieve a common goal.
Abuse	-	A behaviour that violates an accepted norms.
Victimization	-	Implies a degree of injury : It may be Psychological also.
Victim	-	Persons who have suffered harm It may be physical or Mental.

#### **4.9. ANSWER TO CHECK YOUR PROGRESS**

1. Refer Para 4.1
2. Refer Para 4.2.
3. Refer Para 4.4
4. Refer Para 4.4.
5. Refer Para 4.4.



(Space for Hints)

#### **4.10.MODEL QUESTIONS**

1. What do you know about the organized victimization?
2. How the power has been abused?
3. How victims are effected both socially and psychologically?

## **UNIT - III**

### **IMPACT OF VICTIMIZATION AND VICTIM ASSISTANCE PROGRAMME**

#### **LESSON 5**

#### **CRIME VICTIMIZATION SURVEY**

##### **INTRODUCTION**

Theoretical and empirical work within the field of victimology was conducted on the basis of officially recorded information. Criminologists and victimologists were unaware of the “**True**” incidence of crime or victimization. Commonly referred to as the dark figure of Crime. The development of Crime Victimization surveys has brought about a change to this situation. The first crime victimization survey was conducted in 1966 in the united states. It is now a regular feature of the United States, Canada, Australia. The Netherlands, and the United Kingdom and India to conduct such surveys.

##### **UNIT OBJECTIVES**

To study about the Crime Victimization survey. Why this survey is necessary? This survey provides the following information. In a world, the available information can be worked out to have a profile on the victims.

- Physical Traits - Medical history
- Marital status - Personal diaries
- Personal Life style - Best friends and enemies
- Occupation - Education - Employment
- Why this particular victim was targeted ?

## **UNIT STRUCTURE**

Introduction

Unit Objective

Unit Structure

5.1. Advantages of victimization survey

5.2. Criminal Victimization survey

5.3. International Victim Survey

5.4. Urban Victimization

5.5. Summary

5.6. Keywords

5.7. Answers to check your progress

5.8. Model Questions

### **5.1. ADVANTAGES OF VICTIMIZATION SURVEY**

Victimization surveys attempt to bypass the under reporting problem by going directly to the victims. Victimization surveys have the potential for being for most accurate source of data on the incidence of sexual assault. The major advantage of victimization surveys is that they go out into the population and ask for information, not waiting for incidents to be reported to an agency. However, there is no guarantee that individuals will be any more willing to report sexual assaults to census workers than to the police. In addition, the quality and quantity of information obtained by a survey is very sensitive to how questions are asked. The major disadvantage of victimization surveys is that they are extremely expensive.

Another form of assessing the volume of crime in a society is by interviewing the victims of crime. Victimization surveys help us in unearthing

the **dark figure in crime** and the opinion of the cross section of the society on matters relating to crime, punishment, their perception of the criminal justice agencies and the method of handling of the offenders and victims. This is a valuable source of information as many details about offenders and the victims of crime and usually not available with the police. The information collected from the victims also contains their experiences before, during and after the offence has occurred.

The victimization survey conducted by the United States Department of Justice known as the National Crime Victimization Survey (NCVS), has posted an impressive response rate of 95% (1990), but since victims usually experience strong emotions regarding their experience, not all their responses can be considered accurate. For example, in domestic violence, victims usually are reluctant to seek justice, which means they just stop at reporting the crime. Another weakness is that only the most serious crimes are reported and multiple victimizations may not be recorded in detail.

## 5.2. CRIMINAL VICTIMIZATION SURVEYS

The criminal victimization survey concerns itself with measuring criminal incidents for which there are clearly identifiable victims. Thus, it focuses on crimes against individuals and their property. Many crimes, such as corporate crimes, drug offences, homosexuality require a different technique for identifying the victim. In these cases, the victim rarely knows that he is being victimized, for example in corporate crimes, the question of identifying the victim from the offender status is not possible. Therefore, these forms of crime do not usually fit into a crime victim survey. The focus is on conventional crimes; crimes against persons or crimes against property. Criminal victimization surveys also give a wider picture of the victimization from specified criminal incidents -those that will be recorded by the police if brought to their attention. They are therefore useful in making comparisons with the police statistics in estimating the extent of these specified incidents.

Several victimization surveys have shown that victimization is not **randomly distributed** throughout the population (Walklate, 1989). Variables that

are found significant while calculating the chances of becoming a victim of a street crime are age, gender and place of residence. Variables such as these and the understanding of their impact do not stand in isolation from the wider social context. They reflect the way in which structural features of society have an impact on the day-to-day lives of human beings.

### 5.3.INTERNATIONAL VICTIM SURVEYS

The International Crime (Victim) Survey (ICVS), a far -reaching programme on standardized sample surveys undertaken at the initiative of the Dutch Ministry of Justice and the UNICRI, looks at the householder's experience with crime, crime prevention and feelings of insecurity and lack of safety in a large number of countries.

The ICVS was initiated in 1987 with the aim to use a standardized methodology for collection of crime statistics that can be used for comparative purposes. Empirical victimology has made an important contribution to criminological research. The essence of these surveys is that crime is not studied from the State's perspective but the public at large. The surveys measure crime as defined and recorded by the policy but as experienced and recollected by the individual citizens. Respondents can inform the researchers about what they perceive to be criminal victimization, regardless of state policies (Van Dijk, 1999).

The two main reasons for setting up this project was firstly, the inadequacy of offences recorded by the police for comparing crime in different countries and secondly, the absence of any alternative standardized measure. Police reports cannot be used in comparative purposes as victims are the main source of notifying crimes and any difference in propensity to report in different countries will undermine the comparability of the statistics of crime given by the police. Official police reports will vary from country to country as legal definitions, recording practices and precise rules for classifying and counting incidents may also differ. A number of countries have **independently conducted victimization** surveys to assess national crime problems. Moreover, official police figures vary because of differences in

legal definitions, recording practices, and precise rules for classifying and counting incidents. These limitations are well established. The surveys aim at asking the representative samples of the population about selected offences they have experienced over a given time, whether they have or have not reported incidents, and the reasons why they do or do not choose to report a crime to the police. These surveys **provide a realistic count on how many people are affected by crime and in cases of repeating the surveys**; they provide a measure of trends in crime, unaffected by changes in victims behaviour and the administrative changes in recording crime. By collecting social and demographic information on respondents questioned, crime surveys also allow analysis of how risks of crime vary for different groups within the populations, in terms of age, income levels etc. The independent nation and local surveys looked promising for comparative studies, and a few attempts were made to use them. However, the number of countries with appropriate surveys was limited, and the surveys used different methods, making comparisons far from straight forward.

It was inevitable, then, that as more was understood about the effect of methodology on how much and what is counted, a case was made for a fully standardized survey in different countries which would use the same questionnaire, similar methods of sampling selection, consistent survey procedures, and the same method of data analysis.

A fully standardized survey was conducted in different countries, using the same questionnaire, similar methods of sampling selection, consistent survey procedures and the same method of data analysis. There were three rounds to the ICVS; the **first** was developed by a working group set up in 1987 leading to fieldwork in 1989, in which seventeen countries took part, fourteen countries plus Japan and the cities of Warsaw (Poland) and Surabaya (Indonesia). The **second** in 1992 consisted of eleven industrialized countries, the project expanded to thirteen developing countries and seven countries in transition, although in most of these countries surveys were restricted to capital cities, and the **third** during 1996-97, involving twelve industrialized countries, all but one of the countries in the central and Eastern Europe

#### Check Your Progress

1. What are advantages of Victimization Survey?
2. What is the concerned of Criminal Victimization Survey?
3. What do you mean by UNICRI.
4. What is the use of survey by UNICRI.

and fifteen developing countries. The ICVS was expected to conduct its 100th survey during the year 2000 (UNICRI website).

#### **5.4. URBAN VICTIMIZATION STATISTICS ACROSS THE GLOBE**

The ICVS has carried out 54 surveys in different countries interviewing totally 133, 821 citizens, the samples varying from 1000 in developing countries and 2000 in most other countries.

To ensure comparability of the rates from national and city surveys, five-year rates for the national surveys were calculated for respondents living in cities of more than 100,000 inhabitants. In countries, which participated twice or more, the victimization rates were averaged.

#### **COUNTRIES PARTICIPATING IN THE ICVS, BY YEAR, TYPE OF SURVEY AND NUMBER OF URBAN AND RURAL CASES**

Countries	Types of Survey		Number of Urban and Rural cases		
	Nationwide	Capital city	Town -size not coded	Urban	Rual
Albania					
1996		1200		983	217
Argentinian					
1992		1000		1000	
1996		1000		1000	
Australia					
1989	2012			706	1306
1992	2006			1471	535
Austria					
1996	1507			433	1074

## 5.5. SUMMARY

In this lesson we have come to know about the advantages and disadvantages of victimization survey. We have also come to know why must we have the survey. After the survey what is the use of the survey. Does the information sufficient to make a full science - the science of victimology. These statistics can be used for comparative purposes. This is essential to assess national crime problem.

## 5.6. KEYWORDS

1. I.C.V.S- International crime victim survey
2. N.C.V.S- National Crime Victimization survey (u.s.)

## 5.7. ANSWERS TO CHECK YOUR PROGRESS

1. Answer Para 5.1.
2. Answer Para 5.2.
3. Answer Para 5.2.
4. Answer Para 5.3.

## 5.8. MODEL QUESTIONS

1. How International Crime Victim Surveys (KVS) helped to understand the critical condition of the victims?
2. Write an essay about the importance of Crime Victimization Survey.



## **UNIT III**

### **LESSON 6**

#### **PHYSICAL AND FINANCIAL IMPACT**

##### **INTRODUCTION**

“Victim of violent crime” may mean different things for different persons at different times. “Victim” refers to the persons who have been directly harmed. He would have experienced loss due to the crime committed against him, his family members. It may be his parents, guardians, spouses, siblings his children.

##### **UNIT OBJECTIVE**

To study about the victim, - who is a victim?. Is there any acceptable definition by law, whether there is any accepted definition by court, After recognizing a victim, what he victim requires - how to assist him, whether he is in a position to take these assistance. Some do not want to help and their right to privacy must be respected.

##### **UNIT STRUCTURE**

Introduction

Unit Objective

Unit structure

6.1. Physical and Financial impact of Victimization

6.2. Psychological Injury, and social cost.

6.3. Secondary Victimization from the Criminal Justice system and society

## 6.4. Secondary Victimization

## 6.5. Victims needs

## 6.6. The Loss and harm done to Victims

## 6.7. Summary

## 6.8. Keywords

## 6.9. Answer to check your Progress

## 6.10. Model Questions

## 6.1. THE PHYSICAL AND FINANCIAL IMPACT OF VICTIMISATION

At the time of the crime or upon discovering that a crime has occurred, victims are likely to experience a number of physical reactions to the event. These may include an increase in the adrenalin in the body, increased heart rate, hyperventilation, shaking tears, numbness, a feeling of being frozen or experiencing events in slow motion, dryness of the mouth, enhancement of particular senses such as smell and a **flight or flight response**. It is common for people to lose control over their bowel movements. Some of these physical reactions may not occur immediately but only after the danger has passed by. They may occur at a later stage when the memory of the crime returns. After the crime, victims may suffer a range of physical effects including **insomania, appetite disturbance, lethargy, headaches, muscle tension, nausea, and decreased Libido**. Such reactions may persist for some time after the crime has occurred.

Physical injuries arising from victimization may not always be immediately apparent. This may be particularly true in case of domestic violence where the injuries occur on parts of the body that are normally clothed. Facial injuries are by far the most frequent in other forms of assault. Victims may suffer a range of physical damage including abrasions and bruises, broken nose, cheekbone or jawbone and **damage to or loss teeth**. Other

injuries will be associated with assaults involving knives or firearms. Physical injuries may be permanent effect of crime and there is evidence that this has a negative effect on long term psychological recovery since the physical scars serve as a constant remainder of the crime. **Cultural gender** and occupational factors may affect individual's reaction, permanent scarring or disability, as well the reaction of others.

The financial impact of crime is less documented, Victims may incur costs in the following ways: repairing property or **replacing possessions**; installing security measures; accessing health services; participating in the criminal justice system, for example attending the trial. Obtaining professional counseling to come to terms with the **emotional impact**; taking time off work or from other income generating activities' funeral or burial expenses. In some cases, victims may feel a need to move, a process likely to incur financial costs. As a result of the crime, the value of the property may diminish. In the long-term, **crime can adversely impact the victim's employment**. The victim may find it impossible to return to work, or their work performance may be adversely affected, resulting in demotion, loss of pay, and possibly dismissal. This is particularly likely where the crime had occurred at work, as it may be difficult for the victim to avoid people or situations, which led to the initial victimization. **The marital and other relationships** of crime victims are also **likely to be affected**, and this may have significant effect on the family's financial position.

Research shows that the shock waves from victimization touch not only the victim but also the victim's immediate family and next of kin, neighbours, and acquaintances. This holds true for the emotional as well as the financial consequences, and the effects can endure for years or even for a lifetime. In the case of genocide, child abuse, exposure to violence, and abuse of power, the effects can be passed on from one generation to the next. While this is to be expected in connection with offences such as murder, torture, and rape, the crimes of assault, robbery, and burglary can also leave enduring residues of feelings of powerlessness, insecurity, anger, and fear. Not only individuals, but communities and organisations can also be

victimized, thus leading to their deterioration over time as confidence ebbs, fear increases, and the economic burden of victimization becomes insupportable.

The effects of victimization particularly hit hard on the poor, the powerless, the disabled, and the socially isolated. Research shows that those already touched by prior victimization are particularly susceptible to subsequent victimization by the same or other forms of crime. These repeat victims are often found to reside in high-crime communities in many countries, and during times of war. As for the impact of abuse of power, during recent years, armed conflict has claimed countless victims, largely among civilian populations with women and children often the primary targets. Tribal warfare, ethnic strife and other fratricidal conflicts, mass rapes, kidnappings or expulsions, "**ethnic cleansing**", torture, arbitrary detention, and killings have greatly compounded the human toll. The Office of the United Nations High Commissioner on Refugees estimates that at the beginning of 1996, there were approximately 13.2 million refugees, 3.4 million returnees, 4.6 million internally displaced persons, and 4.9 million victims of armed conflict worldwide. The use of child soldiers (ten years of age or even less) in some places, child bondage and new forms of slavery, **the sale and sexual exploitation of children**, also in connection with "**sex tourism**", and kidnapping and murder of street children, have further increased the scale of "victimization. It is estimated by UNICEF that during the last decade some 1.5 million children have been killed in armed conflicts, with an additional 4 million disabled maimed, blinded, or brain-damaged, and many more psychologically traumatized. At least 5 million children have been uprooted from their communities; 100 to 200 million children are being used in exploitative forms of labour; and many are living and working in the streets where they have often been victims of unscrupulous operatives and vigilante killings. Refugees and internally displaced persons are easy prey for abuse by their very status, and they are often subject to **secondary victimization**. This is the case, for example, with violence against migrant workers, who become victims of physical abuse and mental and sexual harassment by employers, In Vishaka - vs- State of Rajasthan (AIR 1997 SC 3011) the supreme court

laid down guide lines to prevent sexual harassment of working women in place of their work intermediaries, or the police, as well as of economic servitude. Refugees and migrants have also become targets of "**hate crimes**" and exploitative practice.

## 6.2. PSYCHOLOGICAL INJURY AND SOCIAL COST

Crime is usually experienced as more serious than an accident or similar misfortune. It is difficult to come to terms with the fact that loss and injury have been caused by the deliberate act of another human being. At the same time, it is evident from research and experience that it is impossible to predict how an individual will respond to a particular crime. One way of conceptualizing common reactions to crime is as a process with four stages. The initial reaction may include shock, fear, anger, helplessness, disbelief and guilt. Such reactions are well documented in the immediate aftermath of a crime. Some of these reactions may reoccur at a later stage as well, for example when attending a trial or going to hospital for medical treatment. Anger is a reaction which some victims and helpers find difficult to deal with. It may be directed at other victims, helpers, bystanders, organizations, and also at oneself. Among some groups and in some cultures **there may be a feeling that it is wrong to express anger** even when it is felt. There may be a pressure on victims to control their emotions. A period of disorganization may follow these initial reactions. This phase may manifest itself in psychological effects such as distressing thoughts about the event, nightmares, depression, guilt, fear, and a loss of confidence and esteem. Life can seem to slow down and become meaningless. Previously held beliefs and faiths may no longer provide comfort. Behavioural responses might include increased alcohol or substance abuse, fragmentation of social relationships, avoidance of people and situations associated with the crime, and **social withdrawal**. For many people, this is followed by a period of **reconstruction and acceptance**, which leads to normalization/adjustment. The early stages of coming to terms with crime are often characterized by **retrospective thinking** where victims long for everything to be as it was before and to turn the clock back.

This **crucial stage** in recovery involves victims accepting fully the reality of what has happened. Cognitive restructuring may be required, in which victims reinterpret their experience to ameliorate the effect of crime and possibly find an explanation for what has happened or evaluate the event as leading to personal growth. The boundaries between these different stages are never as clear-cut as outlined here, and the divisions are intended as an aid to understanding the process rather than categorical descriptions. Equally, victims may not progress smoothly through the stages, but at times may oscillate between them. The extent to which people (victims, witnesses, family members, community members) may be affected by crime will vary enormously among individuals; at one extreme people may shrug off very serious crimes with no noticeable effects, while at the other **extreme people** become "stuck" in a particular stage and never move on.

### 6.3. SECONDARY VICTIMIZATION FROM THE CRIMINAL JUSTICE SYSTEM AND SOCIETY

Secondary victimization refers to the victimization, which occurs, not as a direct result of the criminal act, but through the response of institutions and individuals to the victim. Institutionalized secondary victimization is most obvious within the criminal justice system. At times this may amount to a complete denial of human rights to victims from particular cultural groups, classes, or a particular gender, through a refusal to recognize their experience as criminal victimization. It may result from intrusive or inappropriate conduct by police or other criminal justice personnel. More subtly, the whole process of criminal investigation and trial may cause secondary victimization, from investigation through decisions on whether or not to prosecute, the trial itself and the sentencing of the offender, to his or her eventual release. **Secondary victimization through the process of criminal justice may occur because of difficulties in balancing the rights of the victim with the rights of the accused or the offender.** More normally, however, it occurs because those responsible for ordering criminal justice processes and procedures do so without taking into account the perspective of the victim. Other agencies which come into contact with the victim may cause secondary vic-

#### Check Your Progress

1. What are the Physical reaction to the Criminal event?
2. What are injuries in domestic Violence?
3. What are the Psychological Injury?

timization. **Hospital polices and procedure may restrict relatives access to the body of a loved one.** The hurried schedule of the emergency room may affect a sexual assault victim's privacy or sense of dignity. School personnel may discount child disclosure of abuse. Doctors may not acknowledge signs of spouse abuse. **Spiritual leaders** may attempt to guide victims into paths of forgiveness or accommodation before they are ready or against their wishes. Intrusive or inappropriate investigation and filming, **photographing, and reporting by the media is also a factor.** Even agencies set up to help the victims of crime, such as victim services, victim compensation systems, refugee services, and mental health institutions may have some policies and procedures that lead to secondary victimization. The attitude of individuals is also important. Some people with whom the victim has contact (e.g. family, friends and colleagues) may wish to distance themselves from the distress of the crime by blaming the victim for what has occurred. They may view the victim's behaviour as having contributed to, or even caused, the victimization. They may deny the impact of the crime on the victim by **urging them to forget** about the crime and **"get on with their lives"**.

Families can be a particularly powerful influence in this respect. Victims of abuse of power have particular difficulty in gaining recognition of the fact that they have been victimized. The essence of abuse of power is that it is committed by those who should be expected to protect the population.

The shock and loneliness of victimization can be much greater for these victims. With regard to abuse of power, for offences committed by particular groups within a country (dominant sects or groups, companies, etc.), prompt condemnation of the action by the State and by the victim's.

## 6.4.SECONDARY VICTIMIZATION

Victimology -This study, **devoted entirely to victims**, is a fairly new field within criminology. According to the text, which is currently out of print, *The Crime Victim's Book*, by Morton Bard and Dana .Sangrey, the victim **goes through three stages of recovery.** They are 1) the impact stage,

where the crime has just occurred and the victim may be numb; 2) the recoil stage, when what has happened finally **"hits" the victim**, causing them either to go into denial and dissociation, refusing to accept reality or to continually relive the trauma, **"rehashing"** the details; and 3) the reorganization stage where things seem to be getting better and yet the **victim is still having flashbacks**, especially in the case of those who have repressed the memories. This may be the time the victim finally gets into therapy.

There is a problem with "secondary wounding" by care givers, family members, agencies and society, due to a lack of understanding of the recovery process. This is especially true in the recoil stage when people grow weary of the fact that the victim cannot move on.

With this information, we can see why there would be **"secondary wounding"** in the reorganization stage when everything seems to be **"forgotten"** and the person seems to be **"putting it behind them"** and going on with life. But things are not as they seem. The victim begins having flashbacks, which throws their life into turmoil and makes them feel as if the crime has just happened.

Another form of "secondary wounding" is victim blaming. The reason this occurs lies deep within history and religious beliefs. **When the victim is "in our face" with a fact** which shatters our myths, we can't handle it and need to come up with a reason.

In the 16<sup>th</sup> century, the Protestant ethic held the belief that a person's success and **good fortune was a sign of God's grace**. Therefore, those who suffer must have disappointed God in some way. We have a similar modern belief that if you act good, nothing bad will happen to you. Therefore if something bad happens then you must have been acting bad. I have heard many a woman say, "I've been so nice to them, I've lived a good life, I've done my best, why did this happen to me?" .

**When a rape victim is "in our face" with the truth that our world is not as safe as we had thought**, we need to find an explanation. This is why people say, **"She shouldn't have been there at that hour of**



**the night wearing** what she was wearing, drinking what she was drinking".  
**When a high school girl is raped by a high school boy who is a "friend" to everyone, the girls are more unsupportive than the guys because the victim is reporting something that is a direct threat to them.** Either they may have been raped by him or by someone else or they know they are vulnerable too. So it is a lot safer for them to say she is lying or that she **"asked for it"** or that she did something else **"wrong"**.

With this in mind we now can see why it is so difficult for a victim to recover. Victimology works to assist this process by helping all involved with the victim, to understand the process and be a part of the solution rather than a part of the problem.

## **6.5.VICTIMS NEEDS**

Victims of violent crime need **various kinds of assistance throughout all stages of victimization.** Not all victims will require the same assistance at the same time. This is meant to be a general outline of when and how victims may need support. Some victims may not want help and their right to privacy must be respected. Victims of violent crime cannot be forced into help if they don't want it. For those who want help, they should be provided with the services available from all types of agencies: **police, court, community and system based.** Ideally, victims should have services available at every stage after victimization to allow them to go through the process as smoothly as possible.

## **6.6.THE LOSS AND HARM DONE TO VICTIMS**

There are various types of losses victims endure following a violent crime: emotional, physical, financial and social. These different types of injuries are important to recognize because they indicate the type of support required. For example, **emotional loss may indicate that psychological assistance is needed** or financial loss may mean that compensation is needed.

emotional suffering: feelings of shock, depression, anxiety, shame, loss of trust or safety, and post-traumatic stress;

- physical injuries: if directly assaulted physical injuries endured; as well as physical side effects of depression or anxiety;
- financial or material loss: expenses from loss of paid work, traveling expenses, medical/counseling expenses and direct financial loss from crime;
- social difficulties; disruptions in personal relationships with others, like family and friends; disruptions in being able to work; distorted perceptions of society, for example not being able to trust anyone;
- disinterest in ordinary social events, and difficulty with holidays in the absence of a loved one.

The types of losses experienced depend on the victim's situation and the circumstances of the crime.

## 6.7. SUMMARY

In this lesson we have studied, who is a victim - of violent crime. We also studied - that victims are - who have experienced loss due to the crime - committed against him - his family members. Victim may be parents, guardians, spouses, siblings, his children etc., If he is a victim of sex crime - he would have lost libido, he would have lost his appetite on his food on his job. Loss of marital relationships. Psychological injury and social cost is likely to occur. Adversely affect victim's employment.

## 6.8. KEYWORDS

1. Adrenalin - glandular secretion that speeds heart.
2. Insomania - Sleeplessness
3. Nausea - feeling of impending vomiting.
4. Abrasion - Injury on the body scar
5. Funeral - mournful - burial rite
6. Retrospective - occasion of looking back.

### Check Your Progress

4. What the spiritual leaders attempt on a Victim of Crime?
5. What are the needs of Victim?

## **6.9. ANSWER TO CHECK YOUR PROGRESS**

1. Refer Para - 6.1
2. Refer Para - 6.1.
3. Refer Para - 6.2
4. Refer Para - 6.3
5. Refer Para - 6.5

## **6.10. MODEL QUESTIONS**

1. Critically Review the physical and financial impact of victimization
2. What do you understand by the 'Secondary Victimization'?
3. Give briefly about the psychological injury and social cost of the victimization.

## **UNIT - IV**

# **ROLE AND RESPONSIBILITY OF PROFESSIONALS TO VICTIMS**

## **LESSON 7 - VICTIM ASSISTANCE PROGRAMMES**

### **INTRODUCTION**

The goal of victim services programme is to assist victims in dealing with emotional trauma participating in the criminal process, obtaining reparation and coping with associated problems caused by the impact of victimization.

### **UNIT OBJECTIVES**

The objectives of the programme are to do the following:

Increase the commitment of governments and organisation to do all that is possible to assist victims

Increase range and availability of services for victims from the time of the victimization and throughout the aftermath.

Expand the victims opportunity to participate at all critical stage of the criminal process and to ensure consideration of the impact of the victimization upon the victims in all criminal justice systems and international tribunals.

Increase coordination and networking of all appropriate agencies, organization groups and families kinship and community support systems providing services to victims or affecting the treatment of victims in order to develop an integrated system of victim assistance.

Improve the quality of outreach to and treatment of victims in need.  
Be aware of the unique needs of under of new victim population.

## **UNIT STRUCTURE**

Introduction

Unit Objective

Unit Structure

7.1. Types of Victim services

7.2. Stages in assisting Victims

a. Initial Victimization

a.(i) Services available for immediate impact of the violent crime.

b. Bridging the Gap - Recognizing the victim.

b.(i) The Elements on which compensation could be awarded.

(c) Court Process

(d) Post - sentencing

(e) Current status of Victims rights.

(f) Elements of the Criminal Justice system.

7.3. The Need for Improved Treatment of Victims.

i) Victims and the C.J.S.

ii) Access to services

iii) Training and Technical assistance.

iv) The Scope of Crime and Victimization

v) Cultural diversity and sensitivity.

#### 7.4. Core Components of Victim Services.

- i) Victims Compensation and Restitution
- ii) From Retribution to Responsibility
- iii) Punishment and prevention.

#### 7.5. The Position of the Victim.

- i) Restoration Justice
- ii) Mediation

#### 7.6. Victim Assistance in Germany

#### 7.7. Summary

#### 7.8. Keywords

#### 7.9. Answer to Check your Progress

#### 7.10. Model Questions

### **7.1. TYPES OF VICTIM SERVICES**

Victims need assistance in overcoming the various harms they have experienced, and victims services have been made available by government and through different organisation in many but not all communities. The services vary in their main focus and resources available but all have the same goal of assistance victims. Existing victims services can be broken into four general categorie

#### **i) Police based services**

These programmes being to assist victims when they first come into contact with the criminal justice process such as police being called to the crime scene death notification or the arrest of an accused. They are usually located within or in conjunction with local police departments. These types of services include: death notification, providing information .lbut the crimi-

nal justice system, and investigation assisting with victim impact statements and compensation applications.

#### **ii) Court based services**

They are usually associated with the courts where the services are intended to prepare victims for court and for being witnessed with the trial process. These types of services include: information and oriented about the court process, emotional support throughout the court process if needed, witness services and meetings.

#### **iii) Government operated but may receive some Government funding**

These victims services tend to specialize in various areas of victimization such as : Sexual assault centres domestic violence assistance, and crisis centres. It is very common that these organizations were created by victims of crime or employ victims of crime to help others.

#### **iv) System based services**

This type of services is meant as an all- in one centre where services and information about the criminal justice system including access to both police and crown victim services are available. These services are important as it means victims only have to go to one place and all types of victims can be assisted.

### **7.2. STAGES IN ASSISTING VICTIMS**

During every stage after victimization, victims and survivors of violent crimes all require respect and to be treated with dignity, care, understanding and compassion. In a times where assistance and support are essential professional run the risk of causing victims of crime more harm if they treat them with insensitivity, cruelty, a business like attitude or if they are even blamed. Victims require support and comfort from all those involved in the stages following their victimization.

The following stages are not absolute but rather various processes and situations that most victims must deal after a violent crime has been

committed against them or a family member. As not all crimes result in the arrest of an accused or a criminal trial not all victims will go through every stage. Victims who do not go through the criminal justice system may still require assistance and support because a sense of justice that the criminal justice system has the potential to provide may be lacking. These states are indicated in order to give a chronological order of events and situations some victims; face. Awareness of these stages may make it easier to identify what assistance is necessary at particular times after victimization. The type of support and assistance victims need will change as criminal justice process and their emotional healing progress.

## **7.2. a) Initial Victimization**

Initial victimization is the immediate time after victimization where victims of violent crime need emergency response and care. This includes medical assistance as well as mental health assistance. The primary need for a victim of violent crime is physical first -aid, as provided by hospitals and doctors, if they have experienced bodily harm. In addition to attending to physical harm, there are emotional needs, which also must be met. In the case of both victims of violence and survivors of homicide there are emotional reactions to the crime. Not all people react the same way to violent crime, but there are feelings and reactions which are common. In this initial stage after victimization the feelings tend to be of shock, disbelief, disorientation, vulnerability, fear violation and anger. Because of these feelings experienced, immediate mental health assistance may be necessary.

### **7.2. a. (i). Services available for the immediate impact of the violent crime**

Some assistance can be provided by crisis intervention services. Crisis intervention provides short -term assistance within 24 hours of the victimization. This assistance includes giving victims privacy validating dispelling blame respecting their vulnerable state; making funeral arrangements (if required) helping during contact with police other victims and doctors. They can also assist with informing and contacting friends or family. In addition,



they can assist in providing everyday essentials such as meats and taking care of pets. **This type of assistance may be necessary because victims are in a shocked and confused state.** The initial impact of a crime leaves many victims feeling stunned and disoriented about these unfamiliar events occurring in their life.

For homicide survivors, it is a crucial when being notified of the death of a loved one. Police and involved parties must be respectful and sensitive. This is when volunteer services of crisis intervention programmes can be beneficial to victims.

Even though most major communities provide services such as crisis intervention, these are only short term and assistance is normally required beyond this time period. Those that come in contact with victims and their families should treat them with consideration and patience. Contact with other victims who have had a similar crime committed against them may be helpful, such victims having undergone similar experience and circumstances.

At this stage of victimization, victims should also be provided with referrals to professionals such as psychologists, doctors and victims service agencies (if the victim requires such additional services). It should not be assumed that victims are automatically aware of the services available to them. Victims of violent crime cannot be helped if they do not know where they can go to get assistance. If victims are informed of services, at least they have the option of utilizing these services or not. Many victims will respond to services once they are aware of their existence.

## **7.2. b) Bridging the Gap -Recognizing the Victim**

This is the time after the initial victimization and crisis services but before the criminal justice process has begun. At this time services may be needed but may be lacking before court victim services are available to victims. The time between the actual trial and the initial victimization can take years. In case where an offender is not identified or charged, victims remain in this stage for a longer period of time. Victims in this case still require a great deal of support and assistance, and should not be forgotten.

In this stage, mental health care may also be needed in the form of trauma counselling or support groups. Victims may need assistance in locating an appropriate mental health care provider or support group for long term assistance with psychological and emotional needs. This stage of recovery can be seen as an adjustment phase where victims attempt to restore a sense of self and deal with blame issues. **Feelings may fluctuate between competence and helplessness; apathy and anger and calmness and anxiety.** The difficulty in locating appropriate support (if that is what the victim desires) is finding a group of victims of a similar crime. For example homicide survivors may find better assistance support and understanding by being in contact with other homicide survivors rather than standard bereavement group. This is because coping with the death of a loved one who has been murdered is much different from coping with the loss of a loved one through other causes. Often, issues of violence and horrific circumstances are not properly assessed or understood in typical bereavement groups.

Referrals are needed to direct victims to the best assistance available. Victims may not be aware of the various services available to them, so they must be made aware of them. In addition, victims should also be oriented in social and medical services that may be provided if they need financial help or have experienced a disability. It may also be beneficial for victims to become aware of and get in contact with, victim rights advocacy agencies for support.

At this stage, preparation for contact with police and the criminal justice system is necessary for the victim. In some situations victims need support through and must be informed about police interviews and criminal investigations of the case. Victims also need to be informed about the details of compensation services which are provided by most governments. Crime compensation is a governmental service which provides financial compensation to victims of violent crime or to the families of murder victims.

#### **7.2.b. (i) The elements for which compensation can be awarded**

pain and suffering

- income loss
- expenses incurred as a result of injury or death
- funeral expenses
- any other expenses the board may find to have been reasonably incurred

The financial burden sometimes imposed upon victims needs to be dealt with because it can add worry and stress to an already difficult situation. By having finances taken care of victims stress may be reduced and they can focus on the impacts of the crime.

Victims need to be informed about the forthcoming trial process in order to have an understanding of what they might face. What victims need to know are the procedure in the criminal justice system and legal terminology used. In order to have a more detailed understanding of the criminal justice system additional brochures and books can be useful. Such information can be provided by courthouses or the legal offices. The various phases of criminal trials are provided here to give a basic outline of what many victims need throughout the criminal justice process.

## **7.2. c) Court Process**

The court process is an important stage because this is where the offender is on trial and potentially receives an appropriate punishment for the crime. What victims need is to be fully informed of the trial process, emotional support, participation within the process and respect from criminal justice professionals. The need to be informed is essential to victims as the criminal justice system can be confusing, disorienting and overwhelming. A courtroom can be an intimidating place and make victims feel unwelcome. If victims have never experienced the criminal justice system before how would they know what to expect? An example of the need of orienting victim is they may not know where they should sit in the court room. Confusion on the courtroom can be prevented by simply providing a tour of the

courthouse, a detailed explanation of all the court proceedings they may encounter and cooperation from the Crown and police. There is no excuse for victims of violent crime to experience secondary victimization through poor treatment by the criminal justice system.

### **What are the things that victims want from the criminal Justice**

There is a misrepresentation of victims roles in the trial process as one of revenge against the accused. This is not the case. Most victims are simply looking for

- a) Justice or a signal that the offender is appropriately punished of the crime
- b) Prevention of others experiencing victimization and harm.

### **7.2. d) Post-sentencing**

Even after an offender has been sentenced and his possibly serving jail time; interaction with the criminal justice system has not ended for the victim. Years after the trial victims may encounter probation and parole hearings. Required services for victims include being informed as to what parole or probation processes are: being informed if the offender is eligible for probation or **parole and emotional support throughout the process**. Victims should also be made aware of their rights to participation in processes after the trial.

Probation is when the offender is found guilty of an offence but is released by the court and must obey certain rules set out by the court. This concerns offenders who have been sentenced for less than two years in custody. If the offender breaches conditions set out by the **court the probation can be cancelled and the offender may face being sentenced to jail time**. Conditions of probation may include prohibitions of carrying firearms remaining within specify geographic area and not having contact with the victim.

Conditional release is the release of offenders to the community with control, supervision and support provided by the Corrections department. Parole is the conditional release of offenders who will serve part of their sentence in the community. This means offenders may be temporarily absent from prison released in order to work or released on day parole. They must abide by certain conditions set out by correctional services, such as prohibitions of carrying weapons. In essence an offenders does not complete the full jail time she or he was sentenced to. It is up to the Parole Board to decide whether an offender is qualified for this form of early release. It is important for victims to be informed of parole Board hearings because information the victim can provide (in the form of another **victim impact statement**) can be considered by the Parole Board in making its decision. Victims should be informed of when hearings are going to be held, their right to attend and present a victim impact statement, the outcome of the hearing and if an offender is released from jail early. Such informative services can be provided through telephone access to updates on the offender in some areas on from the parole officers themselves. This knowledge allows victims to know the offenders status ahead of time rather than hearing it from media or encounters with the offenders if he or she is released.

**Victims are entitled to information about offenders such as**

1. When the sentence began
2. The length of the sentence and
3. Dates the offenders becomes eligible for unescorted temporary absence and parole

## **7.2. e) Dynamics of the criminal justice system and the current status of victim's Rights**

Among the most basic functions of civilized society is the protection of its citizenry from Criminal victimization.

In modern day, the primary responsibility for protecting innocent citizens from those who would harm them rests with the criminal justice system.

The criminal justice system involves many components. The effectiveness of this system relates directly to the appropriate balancing of rights, roles and responsibilities of the various participants within the system.

In his preface to **The Price of Perfect Justice**, Mackilin Fleming (1974) reminds us that **"the Goddess of Justice is traditionally depicted holding one hand the scales of justice with which she weighs the right and in the other the sword with which she executed it.** The criminal justice system involves a delicate balance among its many components in the search for truth and justice. The following lines discuss the dynamics of this balance among the various professionals within the criminal justice system and how the victim of crime figures into these dynamics.

## **7.2. f) Elements of the criminal justice continuum**

There are many elements and "players" within the criminal justice system that need to be understood if one is to effectively advocate for the rights of victims of crime. Of course a fundamental precondition is that many of these rights have been established within the legislative and case law framework in different states.

Assuming certain basic rights and protection are in place, than the victims and his or her advocate has some foothold to enforce these rights: Those primarily responsible for assuming victims are afforded the protections and assistance they deserve are criminal justice system professionals.

**The criminal justice system at its fundamental level, includes**

Law enforcement

Prosecution

Defence Counsel

Judiciary

Probation

## Institutional Corrections

### Parole

In addition victims are often involved in cases where the perpetrator is a juvenile who is served by professionals in the juvenile justice system. Moreover there are allied professional that are often brought to bear on the criminal justice system such as mental health professionals, child welfare workers, Medical professionals and others. The dynamics between each is these commons and professional perspectives within"the system breed to be understood to best protect victims rights.

## **7.3.NEED FOR IMPROVED TREATMENT OF VICTIMS**

Victims of crime have generally been treated less than adequately within the criminal justice system. Particularly in modern times. The historic vestiges of a victim oriented or victims driven system, with private prosecution or so called "vigilantism" justice have given way over the last decades to an offender -based criminal justice system. Carrington (1975) and Shapland (1985) and Wallace, Much progress has been made in recent in years to begin balancing the system to provide victims with rights and services (Carrington 1975 Shapland 1985). In order to continue these important efforts, victims and their advocates must understand and learn to work with the delicate balance among the various entities within the criminal justice system.

### **7.3. (i) Victims and the Criminal Justice System**

Victims of crime deserve and services in the criminal justice system that begin at the point of reporting crime to the police., and continue through the e'ntire criminal justice and corrections processes.

The criminal justice system is charged with processing cases from the point of victimization, through investigation, arrest prosecution and sanctions. At each point alone this continuum criminal justice agencies and professionals have opportunities and obligations to provide victims with assistance ser-

vices and accommodation to ease their difficulties in what is already a very trying, tragic time. The criminal justice system can minimize the avoid inflicting secondary victimization that has often characterization much of the plight of victims of crime.

### **7.3. ii) Access to Services**

Access to services is an extremely important component of any services delivery plan, and depends greatly on the physical location and accessibility of such services. For example police officers should be trained and updated on a regular basis about existing victim services programmes including 24 hour emergency crisis response and shelter - and how to make appropriate referrals. Court based advocacy programmes should be established in all adult and juvenile court facilities. Probation officials must guarantee that crucial victim impact information is incorporated into their recommendation to the court relevant to an offenders sentencing and community supervision plan, correctional institutions should include important victim information -such as notification requests and victims impact confidentiality. Paroling authorities should encourage and accept victim statements, and offer victims whatever reasonable protections they request it an offender is released to parole supervision.

### **7.3. iii) Training and Technical Assistance**

Victim sensitivity training should be provided to all criminal juvenile justice professionals as part of mandatory orientation educational programmes as well as continuing education such training should include but not be limited to:

### **7.3. iv) The scope of crime and victimization**

The trauma of victimization with an emphasis on responses that are unique to different types of victims. Victims rights accorded by constitutional and statutory mandates as well as by agency policy. The short and long term needs of victims (Physical, financial, and psychological) with a focus on why appropriate referrals for fellow on assistance are so important.



### 7.3. v) Cultural diversity and sensitivity

The need for multidisciplinary approaches to victim assistance and services from the criminal justice system -including the use of inter agency agreements that stipulate the various agencies.

"Cross training" is also essential to improving the delivery of services to victims within the criminal justice system. Just as service providers want criminal justice system officials to be knowledgeable about and consistent 'in their enforcement of victims' rights, criminal justice system officials want victim advocates to understand the scope and processes of the criminal justice system. Orientation, continuing education and cross training help guarantee that the criminal system continuum includes and involves victims and their concerns.

### 7.4. CORE COMPONENTS OF VICTIM SERVICES

All agencies along the full continuum of the criminal justice system should develop a comprehensive system of services that is "victim centered". **The National Victim Centre** through an office for victims of crime sponsored project entitled Focus on the Future has identified **nine core components** of an effective criminal justice based victim assistance programme. These components are designed to help victims navigate the criminal justice process, afford victims their legal rights and make their overall participation less participation less intimidating and burdensome.

1. Orientation to the criminal justice system and process
2. Assistance to victims and witness who must testify
3. Crisis intervention
4. Information about individual case status and outcome
5. Assistance with compensation and restitution
6. Facilitating victim compensation and restitution

7. Facilitating property return .
8. Information about and referral to community services
9. Education and training for the public justice system personnel and other local service providers about the needs and rights of victims in the criminal justice system.

In addition, witness coordination and post- disposition services are very important. Basic services should be available at every stage of the criminal justice process for victims and witness. It is important to note that these victim services can be provided by multiple agencies or through multidisciplinary efforts.

#### **7.4. (i) Victims Compensation and Restitution**

Victim compensation is a formal procedure mandated by law, which provides money to victims for those expense resulting from their victimization to be paid by the state. Restitution is a formal procedure mandated by a judge which provides money and /or service to the victim for damages or suffering which resulted from their victimization, to be paid by the offender.

#### **7.4. (ii) From Retribution to Responsibility**

Victim/ offender mediation is a restorative justice process because it is a viable and positive pathway from a criminal justice of retribution to one of restoration and responsibility. It emphasizes the needs of victims of crime and holds offenders accountable and responsible for the harm they have caused. These together with a goal of increased community well being through direct involvement with the rehabilitation and reintegration of both parties back into society, are at the heart of restorative justice.

Crime has its origins in the social conditions and relationships of the community (Marshall 1999) and restorative justice humanizes the traditional criminal justice process by putting it into its rightful social setting (Wright 1998). Instead of owing an abstract debt to society to be paid in an abstract way by experiencing punishment sometimes weeks or months occa-

#### **Check Your Progress**

1. Examine the Types of Victim Services
2. What do you mean by system based services.
3. What are the stages in assisting Victims.
4. What are elements for which compensation can be awarded.
5. Examine Post - Sentencing.

sionally years after the event the offender owes a debt to the victim to be repaid directly to the individual in purely legal terms.

Criminal acts do more than break the law -they cause harm. Our traditional criminal justice system whilst it claims to hold the offender accountable is actually very bad at this because the emphasis on retribution means that all attention, including that the offender is focussed on the question of how much suffering he or she ought to receive from the sentencing court, rather than on the damage or distress suffered by the victim and / or the community.

#### **7.4. (iii) Punishment and Prevention**

**Our criminal law is geared to punishment, not to prevention.** It is the state that brings the prosecution against an offender. The victim of crime has no role in the court proceedings save providing evidence that offers emotional support to the case for the prosecution. Current criminal law is not cost effective. It is criticised for not working for the communities it is meant to serve. It was not even designed for the complex, diverse, technological and multicultural communities it is meant to be serving. It is not preventing crime rehabilitating offenders nor ameliorating the harm overflowing. The management of crime is further complicated by the public fascination with it and vested interests continue to sensationalize abhorrent behaviour to both terrify and entertain. Today the image of crime 'invade' the community as never before as it is beamed around the world with a media enthusiasm of awesome proportions and immediacy, presumably on the basis that it is the "bloodier the better" from the stand point of selling newspaper and television time. And there is little doubt that this is a picture of personal and public horror in Kosovo, Los Angeles, Dublin, London, Dilli or Moscow are thrust into the living rooms of private homes without comes more pernicious than just increasing media sales. They create a pandemic of fear in which a punitive retributive criminal justice system offers an appeal to control criminal behaviours, while many individuals lock themselves securely into their own homes. Turning homes into prison, Many people are fearful of

attack, a few do not leave their homes at night, some do not frequent parklands and our public gardens are emptied of the very people they are designed to please.

Driven by the feminist movement after the atrocities of second world war, the early emphasis on the plight of victims was on the powerless women and children who had suffered brutality and rape. This was the critical and meaningful beginning of the now world wide movement that is concerned with the care and needs of victims of all crimes. It impacted the consciousness of the community and while doing so highlighted and exacerbated the problems in the traditional criminal justice system by raising important issues of the right of victims of crime and the difficulties associated with the enforcement of those rights.

## 7.5. THE POSITION OF THE VICTIM

For a victim of crime there is no warning, no training no dress rehearsal, nor preparation. It can happen in any place and at any time in the privacy and sanctity of the home or in a crowded shopping centre. It can be at the hands of a stranger but is more likely to be at the hands of an acquaintance a friend or family memb'er. Fear and a terrible sense of powerlessness dominate the lives of many victims. Anxiety, confusion, nightmares, loss of appetite, loss of trust in others and in the taken-for-granted environment are but some of the prices that **victims pay for the sins of others** (Benjamin 1995).

Such personal terror and trauma may last for two days, weeks or lifetime. It is neither addressed nor acknowledged by the traditional criminal justice system and it is possibly for this reason that the trauma outcomes of victimization have become the 'triggers' that motivate victim assistance movements around of the world. Mcshane and Williams (1992) suggest that in some instances the suffering of victims have been manipulated into a radical victimology by the vested interests of law and order campaigns.

This uncovers potential problems that demand serious consideration by service providers. It also clearly indicates the need for careful service

design, regulations, staff skills training and monitoring plus clearly stated guidelines and standards of best practice of ensure a programmes continuing integrity.

Perhaps not surprisingly a mounting concern for victims tends to generate myths and feed some ideologies in which revenge plays a major role. One of these with disturbing currency and deceptive credibility is that giving rights to victims of crime has some direct correlation to this status of accused persons. Focussing on rights and retribution plays into a philosophy of a purely punitive law. It does not lead to a victims healing and can readily mask the importance to the individual and the community of an offender accepting responsibility for the harm that has been caused. It has absolutely nothing to do with understanding the dynamics of criminal behaviours, its causes and its outcomes. The courts have tried for hundreds of years to control crime by punishing offenders sometimes very severely, in the hope that punishment would deter others. Time and time again it has been shown that the courts alone cannot control crime.

When considering the impact and outcomes of crime never forget that its causes are not to be found in the social, health, educational, industrial and political environments in which it occurs. Serious crime prevention strategies need to address these matters with coordinated long term plans for in addition to the direct personal distress and damage that it causes its effects ripple out into the community creating an alienating, destructive climate of fear. The media gives wide coverage to critics who advocate crime control through harsher penalties despite research strongly indicating that deterrence and prevention will not be achieved through higher sentences and punitive action. And in the clear and concise words of Haami Piripi, a restorative justice worker from New Zealand "if we always do what we have always done we will always get what we have got".

So let us turn our attention from "what we have always done" and compare it with what we could do no more than that to what is possible through a restorative justice process that has proven to be effective in other places. For we are now in the happy position of being able to benefit from

the practical experienced of restorative justice workers and theoreticians around the world and can consider and make informed decisions about the various models that operate either independently or alongside traditional criminal justice systems.

Programmes of restorative justice emphasise the consequence of crime and focus of the personal involvement in the justice process of the offender, the victim, their families and the community. They 'stress the offender's responsibility together with the needs of the victims and those of the community. Though personal (direct, indirect or shuttle mediation) contact between the victim and the offender in the presence of skilled mediators, restorative justice examines how these can best be managed and works with both parties towards an agreed plan of action for the future.

### **7.5. i) Restorative Justice**

Restorative justice aims to understand the dynamics of criminal behaviours its causes and its outcomes. It has the potential for accommodating the sometimes competing interests of the' relationship between the State, the victims and offender. It provides an entirely different theoretical framework for responding to crime (Umbriet 1994). It is justice system that is rich in flexibility and can be adapted into any cultural setting. Restorative justice is indeed a valuable tool in the multi cultural communities of our shrinking global village. Its richness stems from its multi disciplinary (Post graduate: law, medicine, behavioural sciences, teaching, nursing and the like) professional base, "flexibility of practice and forward looking, problems solving orientation" with the emphasis on seeing crime problems in their social context (Marshall 1999)

Restorative justice through a victim and offender mediation framework was first established by the Mennonite community in Canada in 1974 and since that time has spread in a variety of models across America to Britain, Western Europe and New Zealand, arriving in Australia in 1989. Its flexibility is reflected in the many models employed. America tends to highlight reconciliation and the provision of an alternative to incarceration; Euro-

pean programmes have diverse goals amongst them restoring the solution of the crime as do Australia and New Zealand where most of the programmes focus on young offenders. By meeting the offender and being able to express feelings to the culpable party, to witness them as human beings rather than vague impersonal treats to receive their apologies and exercise the privilege of forgiveness may help victims restore their personal equilibrium in a more direct and immediate way than would otherwise be possible (Mace 1993) such opportunities occur through a structured programme of mediation circle process to include family or particular community supports through the representation of employers, teachers, social workers and others. The intentions of circle of family conferences are more comprehensive than those of victim/offender meditation and focus on addressing the offenders behaviour and its causes. They are dedicated to working out a plan for the offender and in engaging the positive influence of community supports to implement it. This was the British experienced of victim and offender meditation reported by Marshall and Merry in 1990. They also found that victim participants "were more likely to be surprised by the feelings evoked once engaged in the meeting with the offender feelings otherwise suppressed and perhaps never positively resolved". (Manshall and Merry 1990)

Of course restorative justice is not a panacea and of course may not be appropriate for all situations but it is carefully structured programme that was designed to involve the community in actively preventing crime by reducing recidivism, and reintegrating offenders and their victims back into the community to which they belong. By 'community' we do not mean a particular group of people but mean the victim and offender circle of relatives and friends or as mentioned social workers, teachers, employers and so on. Restorative justice may also provide an opportunity to avoid an 'escalation of legal justice and associated costs' by creating a working community that supports victims and offenders and is active preventing crime. These are the reasons that is called restorative justice.

Of all forms of meditation those of restorative justice present some of the most difficult philosophical ethical and practical issues concerning the

balance of power between the participants; the power of the State as a silent but all powerful third party; the requirements of the court, the views of judges, magistrates, lawyers, police and correctional services alike. Such matters are influenced by the model chosen and the principles of justice and fairness surrounding 'voluntariness' confidentiality and '**plea bargaining**'.

### 7.5. ii) Mediation

All restorative justice must have the three essential elements of best practice: complaints procedure and judicial oversight. For without these are well-grounded fears that the safeguards of "due process" may be subverted, leaving the process open to abuse and one or both of the participants being exploited. A pivotal principle of mediation theory is voluntary participants. In criminal justice connected mediations, this is a critical and complex issue for most offenders are inarticulate, poorly educated and have little experience of employment, many have substance abuse and financial difficulties (Freckleton 1955) and all have the largest power that the States exercised over its citizen (Morris 1974) against them. In this context some commentators refer to the illusion of Voluntariness because of its very nature, criminal court connected mediation assumes a different status.

The term 'voluntary' in contrast to mandatory or coercive and consider it to be a reasonable description of the entry process provided that victims are supplied with options for action that allow them choice in their degree of involvement in the programme provided that victims are supplied with options for action that allow them choice in their degree of involvement in the programme e.g. meeting the offender indirect mediation (without the offender present) or group conferencing with the offenders indirect mediation (without the offender present) or group conferencing with the offender's family (Marshall 1999) The offenders entrance into the programme must be by free and informed consent mirroring the agreement required by the court before admission into a community based corrections programme.

Voluntary participants does not mean that there may not be pressure to try mediation but it does mean that the participants can withdraw with-



out prejudice at any point after the process begins. It is only in respect of the outcome that meditation is voluntary. Attempting meditation does not mean that the participants are forced to settle. Some programmes in New Zealand have replaced the concept of voluntariness with one that acknowledges a 'willingness to participate' as a more accurate interpretation of what occurs within a criminal justice system."

Confidentiality regarding the substances of the exchange between the participants is also seen as defining of the meditation process. This too it is not a straightforward matter in a criminal justice connected meditation where the potential danger points associated with confidentiality are; an official request for details of the exchange between the victims and offender and or an attempt by one of the participants to misuse the meditation information in a civil action in the media or maliciously. Such as difficulty can be overcome by a signed agreement between the parties, the court and the restorative justice agency. If other individuals are attending for example family, friends or professional support persons. It is necessary to obtain their commitment to confidentiality separately.

Victim and offender meditation is called restorative justice because while because holding an offender accountable for an act of wrong doing it aims to repair the damage caused heal victim and harness community energy in crime preventing by understanding and dealing with the reality of crime causes is impact outcomes. Punishment alone does not achieve these goals but a justice system combines the safeguards of the traditional process with the restorative qualities of accountability and healing can.

## **7.6. VICTIM ASSISTANCE IN GERMANY**

The White Ring Germany Weisser Ring: The WHITE RING is a German non-profit association for the support of crime victims. It was created in 1976; its aims are to render aid to victims of crime, to work to improve the criminal justice system and to prevent crime. At present the association counts more than 70,000 members and maintains about 400 branch offices within Germany. It provides victims with: assistance and personal care for

crime victims; assistance in handling authorities (e.g. request after the victim compensation law or requests to help calculate expenses); financial support in states of distress, recovery and support programmes for the victims and their families, referrals to other organizations.

Anna was a pretty, blond 25 year old Russian women who had trained to be a exhibition ballroom dancer in her native town. Two years ago, she was recruited to be a dancer in Germany by answering an advertisement in a Russian newspaper. She was transported to Germany through Poland by bus where she was taken to an apartment, locked up in a room and told that she would be working as a prostitute. There was another Russian girl in the apartment who had been horribly beaten for having resisted forced prostitution. Anna was terrified and she initially agreed to work for the German pimps -but after being repeatedly raped by over 20 male "clients" during her first day, she refused to cooperate any further. She was beaten with a metal pipe for resisting. Both of her arms were broken before she was systematically raped by the pimps.

The German government has made the highly controversial decision in the eyes of human rights activities throughout Russia and the world to act as an official "pimp" for the 2006 World Cup -anticipating millions of dollars in revenues from the exploitation of women's bodies and souls by tens of thousands of male football fans notorious for their drunkenness and violence.

In Russia, we are already seeing the rise in trafficking recruitment activity. The Angel Coalition Trafficking Victim Assistance Centre has received over 500 calls in the past few months from young women and their concerned families about various offers to work as waitresses, hostesses, advertising models, cooks and cleaning personnel at the World Cup. The fact that expenses for travel and housing in Germany will be deducted from the women's earnings as well as the fact that the jobs are offered without work permits are clear indicators that the activity going on before our eyes is trafficking of Russian women and girls to serve in the World Cup brothels. In fact, we are seeing an effect of the market principles of supply and demand in operation. There are not enough "legal prostitutes" in Germany to

meet the sexual demands of the anticipated mobs of sex-seeking men or to fill the beds of the mega-brothels condoned by the German government. Unfortunately, pimps do not have to look too far to find a supply of tens of thousands of desperate women in Eastern Europe and the Former Soviet Union who still believe the western media hype of a glorious life just across the border or women who have no choice but to try and make money in any way that they can to provide for their families and their children.

How are they recruited, and transported? Recruitment is easy, Recruiters are often \ Russian crime groups posing as legitimate businesses and protected by Russia politicians who own nightclubs and brothels in .Germany. Once recruited, women are transported through the same extensive network of smugglers that transport drugs and guns throughout the Former Soviet Union and into Western Europe. Of 29 calls to the Toll-free helpline of the Angel Coalition Trafficking Victim Assistance Centre in Moscow in 2005 from trafficking victims in Germany. 17 revealed the existence of separate but equally well-developed criminal networks actively operating between Russia and Germany.

Germany is a primary destination country for Russian women trafficked for prostitution even without the increased recruiting for the World Cup. In 2001 the German Federal Criminal Police provided the alarming data that 27.5% of women trafficked to Germany were from the Commonwealth of Independent States. The UN estimated in 2004 that 15,000 Russian and East European women worked as illegal prostitutes in the city of Berlin alone and that Russian women constitute the third largest group of women annually trafficked into Germany. Europol figures confirm Germany as one of the four main receiving countries for Russian women.

Sadly, in countries like Germany where governments have opted to turn the exploitation of women's bodies into a source of gross national product, it is their best interests to promote an image of prostitutes as confident professionals enjoying their work. But we know first hand the effects that systematic rape, violence and humiliation will have on thousands Russian women .and girls who will be forced into prostitution for the profit of organized crime and the German government.

Fortunately for our Anna, the police were informed of the screams coming from the apartment and Anna was rescued during a police raid and sent back to Russia. A German NGO informed the Angel Coalition Trafficking Victim Assistance Centre of her imminent arrival and she was met at the airport and taken to an NGO shelter where she remains there. Her arms will have to be re-broken and her hands will never function normally. She will never dance again but she is alive.

Germany's policy of legalized prostitution and tolerance of trafficking has lead to the most flagrant abuse of women for profit by a Western European government. The so called World Cup is a human rights disaster in the making -a crisis which is already drawing global attention to the human rights position of Germany as a nation. Its stance on women and gender and its relations with one of its major trading partner nations. The Russian Federation.

The 65 member NGOs of the Angel Coalition called upon the German government to close the "mega-brothels" and the "performances boxes" and turn the focus of the World Cup activities to football instead of legalized violence against women. If Germany proceeds on the current path, the world will not remember the excitement of the sport of foodball so much as the legalized rape and degradation of trafficked women.

Then the German government look further into reversing the legislation which brought such a human rights calamity onto German soil and repeal legalized prostitution in Germany.

## 7.7. SUMMARY

The Goddess of Justice is traditionally depicted holding in one hand the scales of Justice with which she weighs the right and in the other the sword with which she executed it. The criminal justice system involves a delicate balance among its many components in the search for truth and justice. The Victim is in need for improved treatment. It should provide assistance and accommodation to ease their difficulties. We have come to know that the National Victim centre has identified Nine components of an effec-

tive criminal Justice based victim assistance programme. They help victims navigate the criminal Justice process afford victims their Legal Rights.

## **7.8. KEY WORDS**

1. Continuum - Continuous
2. Core components - Important Points
3. Divesity - Many
4. Stipulate - Condition
5. Mandatory - Compulsory
6. Legal Prostitution - Lawful promiscuous sexual intercourse.
7. Trafficking - Transporting
8. Exploitation - Notable Act.

## **7.9. ANSWER TO CHECK YOUR PROGRESS**

1. Refer Para 7.1
2. Refer Para 7.1.
3. Refer Para 7.2
4. Refer Para 7.2. (b) (i)
5. Refer Para 7.2. (d)

## **7.10. MODEL QUESTIONS**

1. Write an essay about the various victim assistance programmes.
2. Elaborate various types of victim services.
3. Give an account about the Restoration Justice in our country.
4. Write briefly about the victim assistance programme in Germany. ..

## **UNIT IV**

### **LESSON 8**

#### **CRIMINAL JUSTICE**

##### **INTRODUCTION**

What is the necessity of a criminal Justice system. The fight between the law enforcing agencies and the criminals never ended. It is going on for ever. Neither the Law enforcing agencies won the game nor the criminals won. If it is the case - what is the necessity for a criminal justice system? The question is very simple. But it is difficult to answer. If we do not have a police system or a criminal justice system, the society has to suffer in silence. To protect the society we must have these systems. In the end Justice will win and people come to know the crime does not pay.

##### **UNIT OBJECTIVE**

To know about the Role and Responsibilities in criminal Justice professionals, to know the victims of criminal Justice system - the enforcing agencies - the roles and responsibilities.

##### **UNIT STRUCTURE**

Introduction

Unit Objective

Unit Structure

8.1. Law enforcement

8.2. Responsibilities of Law enforcement officials to victims of crime.

- 8.3. Prosecution
- 8.4. Trial
- 8.5. Judiciary
- 8.6. Roles and responsibilities of Judges
- 8.7. Probation
- 8.8. Institutional Corrections
  - a. Correctional Officials Roles
- 8.9. Parole Agencies
  - a. Other Professionals
- 8.10. Implementing and providing - Rights
- 8.11. Creating awareness among criminal Justice Professionals.
  - a. Indian society of Victimology
  - b. National Crime Victims Rights
- 8.12. Gender Related Violence is global.
- 8.13. Killing victims
- 8.14. Hate Crime
- 8.15. World society of victimology
- 8.16. Amnesty International
- 8.17. Victim Assistance in Human Rights
- 8.18. Summary
- 8.19. Key words
- 8.20. Answer to check your progress
- 8.21. Model Questions

## 8.1.LAW ENFORCEMENT

Modern police forces are highly structured organization are accorded considerable authority, particularly the power of arrest that is provided each sworn law enforcement officer. Law enforcement agencies have traditionally addressed issued involving the general welfare of the public at large. As noted in Ryan (1994) in 1829 Sir Robert Peel Prime Minister of England included the following in his basic tenets of policing. "To maintain at all times a relationship with the public that gives reality to the historic traditions that the police are the public and the public are the police; the police being only members of the public who are paid to give full -time attention to duties which are incumbent on every citizen,. in the interest of community welfare "

As the "first responders" to most crimes, police departments serve a critical and primary role in providing immediate intervention and assistance to victims of crime. Unlike most social service agencies, police departments are typically open every day of the year, 24 hours -a -day. As such, there is tremendous responsibilities on the part of law enforcement officers and civilian personnel to provide sensitive and supportive victim services.

It is important to keep in mind that the **three primary** function of law enforcement are to

- a) Protect life and property .
- b) Prevent crime
- c) Apprehend offenders (Barlow 1990) (to arrest the accused persons).

### **Police Role in victim services**

Although police departments today tend to provide more and better victim services these services were not always part of traditional policing. The positive change on behalf of providing quality victim services has been very encouraging; however many police officials have perceived their victim assistance responsibilities as a secondary responsibilities as a secondly responsibility, at best.



Victim sensitivity training for police officers comprises an important improvement. Historically, police academies have not provided adequate training for law enforcement personnel regarding victimization and the effect violent crime has on crime victims. This means that under trained law enforcement personnel come into contact with an emotionally distraught victim, which can result in a combination of effects that decrease a victim's confidence and willingness to participate in the criminal justice system"

Much progress has been over the last decade to increase law enforcement sensitivity to victims' issues. The establishment and expansion of law enforcement based victim services programmes have benefited both law enforcement and victims. When effective victim services programmes are provided through a police department, law enforcement officers are able to devote their time to the primary law enforcement responsibilities of investigating crimes and arresting suspects. Victims are well served because basic services are provided by law enforcement. This is extremely important because in a large majority of crimes, no perpetrator is ever apprehended. This means that court based programmes will never come into contact large numbers of victims. Their only hope for assistance from the criminal justice system would be at the police -based level.

The move toward community policing in many jurisdictions has important implications for victims and those who serve them. With more officers visible and active in the street and in neighbourhoods the delivery of victim services can be provided more swiftly and involve supportive advocacy from all facets of a neighbourhood or community (such as business churches and social services)

## **8.2. THE SPECIFIC ROLES AND RESPONSIBILITIES OF LAW ENFORCEMENT OFFICIALS TO VICTIMS OF CRIME**

Police -based services provide essential assistance to victims of crime. These include on site crisis intervention and securing emergency medical assistance. Additionally programmes may provide information and referrals to

services and resources that can aid in a victim's short and long -term reconstruction. Essential service should include, but are not limited to Orientation to the law enforcement and investigator process.

Provision of or referral accompaniment to crisis intervention and psychological first aid. Accompanied to emergency medical services in cases involving injury. Contacting a victim services professional to provide on -site assistance and support upon request from the victim

Providing information to crime victims about their constitutional and statutory rights and the availability of crime victim compensation. Securing the victims property if personal safety has been compromised as a result of crime.

Personally contacting the victim by telephone or in person 24 to 48 hours following-the initial response to see if assistance has been sought and or received. Immediate referrals (verbally and in writing) to community agencies that offer emergency services to victims as well as information about financial should be provided to all victims. For example a brochure should be developed in different languages and given to victims that include information about emergency and long -term services and victim compensation.

Law enforcement agencies should also establish and enforce strict property return protocol and procedures. This should be a standardized. Jurisdiction wide programme - closely coordinated with prosecutors officers and the courts that can eliminate potential confusion about exactly which property rights and procedures are enforced by different law enforcement agencies.

Essentially police based services when adequately staffed and funded can provided critical assistance and information to victim as they progress through the criminal justice system. Perhaps most important, every law enforcement agency at the central, state and local level should assign a staff member to serve as a liaison to crime victims and victim services. This designation will enhance all roles and responsibilities described above. And will coordinate and streamline the victims' rights and the delivery of victim services.

### **8.3.PROSECUTION**

When law enforcement has investigated a crime and a suspect has been arrested, the cases are then referred to prosecutions. Although each state's laws and procedures provide for different ways to initiate a criminal action, this is usually handled through either an initial court appearance or some process leading to charging and arraignment. At this point, information regarding the investigation and facts of the crime is presented by law enforcement to the court with the assistance to prosecutors and appropriate charges are levied against the defendant. When appropriate, he or she is "bound over for trial" on the charges levied.

Again, victim advocates should be mindful that the prosecutor's primary role is the successful prosecution of criminal cases. This is accomplished within specific budgetary and human resource limitations. Therefore there is tremendous motivation to utilize the typically limited resources made available to prosecutors to dispose of each case in the most just, yet efficient manner possible. The motivation to dispense cases due to the typically overwhelming work load handled by most prosecutors offices often comes into direct conflict with the needs and desires of individual victims who want their particular perpetrator prosecuted to the full extent of the law.

### **8.4.TRIAL**

Assuming a case goes to trial, the accused person has the right to confront and cross examine his or her accusers. Often, this is very difficult for the victim, who must be well prepared to withstand the onslaught of cross -examination by often aggressive defense counsel. Typically use method that involve the strategy "defence by distraction" This approach is based on the notion that in order to place any possible "reasonable doubt" within the minds of the jury a defence lawyer will attempt to focus attention of any other possible factor than the accused persons own actions. If the accused person is not realized on various technical violation of his or her rights that may arise (for example from search and seizure issues), attempts will be made to blame others for the situation. The police will be accused of other

violation, society may be implicated as the true cause of the problem and especially victims are often blamed for their contribution to their own victimization. This can be a very difficult time for victims and they need to be well prepared and supported.

There are a number of services that can and should be provided by prosecutor - based victim assistance programs. The most important of these are appropriate notification programmes regarding the status of the case and the delays that often occur in the progress of a criminal prosecution. Victims are most often distressed by the lack of progress in their cases and the need to rearrange their personal and work lives repeatedly to attend court hearing that are often delayed. Also, victims may require assistance in attending and participation in court proceedings, protection from intimidation and harm basic orientation to the criminal justice system and their appropriate role within it, as well as other services and interventions that are described at length in other chapters. Of course, referrals to appropriate victim assistance and victim compensation programmes should be made the prosecutor's office.

## **8.5.JUDICIARY**

The judiciary is intended to be a neutral entity that oversees the progress of a criminal action. Judges should equally weigh and protect the rights of all parties involved in a criminal prosecution. Of course a judge can typically only take actions that are specified by law and procedural rules otherwise are within the discretion mandated by law.

Judges can provide essential protection to victims. For example, when cases involve children certain accommodations such as allowing the victim to testify through close circuit television or granting orders requiring defense counsel to lower themselves to the child's eye level and not raise his or her voice as well as other methods of making the courtroom less intimidating to a child can be ordered. Judges can also expedite trials so as not to further victimize the crime victim due to additional delays during an already difficult process. Judges can deny motions by the defence that is clearly aimed at offending the victims.

Judges are empowered to sentence convicted criminals for the crimes for which they have been convicted. It is important that judges include information regarding the impact of the crime on the victim in their assessment or appropriate sentence. Often this information is providing through the prosecutor -based victim programme, a probation office or another official source and is typically referred to as a Victim Impact Statement (VIS). VIS information is often the only comprehension assessment of the injuries caused by the offenders available to the judges; it is crucial that this information be conveyed to the sentencing court. Judges are also involved in various post disposition decision, such as reconsideration of sentences and appeals.

## **8.6. SPECIFIC ROLE AND RESPONSIBILITIES OF JUDGES TO VICTIMS**

Judges can help assure victims are provided their rights under the law, as well as with adequate court based services which should include the following :

Courtroom orientation for victims.

Providing victims with physical waiting accommodations that are safe, secure and separate by sight and sound from the accused person or his her family and friends.

Considering victim impact information in all cases prior to sentencing (including in change of plea bargains if they do not coincide with the sentencing).

- Asking attorneys if they have consulted with the victim,
- Including any reasonable measures requested by the victim to ensure his or her safety and security such as protection or "no contact" orders.
- Ordering restitution payments that are realistic receiving priority above fines and other offender obligations.

- Ensuring that restitution orders do not "fall through the cracks" by developing a system of collection, disbursement, enforcement and victim Recourse (that involves probation, the clerk of court, corrections and parole).
- In inter -familial criminal cases ordering convicted offenders to pay financial obligations -such as child support costs of counseling, legal fees or mortgage, rent payments -that help the victim gain independence from the perpetrator.
- Ensuring that all relevant victim information be included to convicted offenders' files -with victim confidentiality and the security of this information guaranteed -that are sent to probation, parole, or institutional corrections.
- Finally, judges can steer their courts processes that are not only "offender directed", but "victim centered" as well. While conflicts can arise between the rights of the accused / convicted offender and crime victims, more often is no disagreement about the importance of making participation the status quo for a all participants in the criminal justice system.

## 8.7.PROBATION

Probation is often the actual handed down by a court following a trial. Prior to any agreement of probation, the probation officer should interview victims as part of the **Pre-Sentence Investigation (PSI)** to determine the physical, financial and emotional impact the crime had on them, When an offender is sentenced to probation, he submits to community supervision from a probation officer. The probationer may be required to fulfill certain requirements -called conditions of probation -that might include; no contact with the victim; payments of monetary obligations to the victim such as restitution, child support, mortgage payments, etc.; or other monetary fines (that often support law enforcement and victim services) no use of alcohol or other drugs (with an agreement to submit to random testing); specific treatment that addresses the probationer's criminal activities (such, as sex of-

### Check Your Progress

1. What are the three primary functions of Law.
2. Examine the Role and Responsibilities of Law.
3. What do you mean by Prosecution.
4. What is trial
5. Explain Judiciary.
6. Role and Responsibilities of Judges.

fender treatment, alcohol or other drug counseling, anger management. etc;) and / or community service, While restitution payments are monitored by probation agencies, the court usually collects them.

An important condition of probation is that the probationer commits no new crimes during his or her period of community supervision. If a probationer violates any condition of his sentence, the probation agency can rescind or "revoke" probation. resulting in the offender's incarceration in jail or prison.

Specific role and Responsibilities of Probation officials to Victims of Crime Probation official's roles and responsibilities to victims should include but are not limited to Contacting items to assess the psychological, financial and physical impact the crime had on them as part of the Pre -Sentence Investigation (PSI)

Incorporating any victim impact statement (allocation written audio or visual) into the official PSI report to the court. Determining any specific conditions of probation that will ensure the victim's safety and security. Soliciting victim's opinions relevant to appropriate community service sanctions for the Probationer.

Determining the amount of appropriate restitution payments and developing a realistic schedule for the collection and disbursement of restitution to the victim. In some jurisdiction, probation officers are charged with physically collecting restitution payments and forwarding them to victims.

Supervising the probationer's involvement in any victiml offender programming as victim impact classes or panels, victim \ offender mediation or conciliation or "impact of crime in victims" classes that victims choose to participate in on a strictly voluntary basis.

Notifying thé victim of any probation violations that result in an offender's incarceration. Monitoring probationers to ensure full compliances with all conditions to probation that affect the victim's rights, safety and security as well as the general orders of probation. Providing information and referrals to victims who require assistance.

Participating in multidisciplinary efforts with other entities that compose the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

## **8.8.INSTITUTIONAL CORRECTIONS**

When a convicted offender is sentenced to a term of imprisonment, the Department of Corrections assumes responsibilities for his supervision. The offender's file that contains details from the crime, court case and sentence, victim impact statement (when applicable) recommendations for treatment and services during the periods of incarcerating and personal information, is utilized as a basis for offender classification. The purpose of classification is to place the offender in the most appropriate incarceration setting (minimum, medium, maximum or super maximum or super maximum facility). The department implement and monitor work, educational and treatment activities available to inmates; and coordinate and release into the community with paroling authorities.

### **8.8.a. Specific Role and Responsibilities of Institutional Corrections to Victims of Crime**

Corrections officials' roles and responsibilities to victims should include but are not limited to :

Obtaining relevant victim information -including victim impact statements and protection orders from court documentation for inclusion in the offenders file.

Protecting the confidentiality of victim information

Providing victims and witnesses with information and recourse relevant to intimates who attempt to intimidate, harass, or harm the victim during their period of incarceration.

Upon request, notifying victims of an offender's status including but not limited to: current location, classification, potential release date, escape or death.



Implementing and monitoring victim / offender programming, such as victim impact panels victim / offender mediation or conciliation or "Impact crime on victims" programmes.

In some departments (Such as California), monitoring, Collection and disbursing restitution, payments to victims and / or fines to state victim compensation programmes.

Ensuring that inmates receive programming that is commensurate with court orders relevant to victims such as sex offender treatment, alcohol, and / or other drug counseling anger management etc.

Coordinating the physical location and logistics of parole release hearings with paroling authorities, victims and victim services providers.

## **8.9.PAROLE AGENCIES**

When an inmate is released from prison his reintegration back into the community may be accomplished through the parole process. Parole is the early release of prisoners with conditions attached to that release that are designed to protect the safety of both the victim and the public. Parole is considered part of the prison sentence but is served in the community. Violations of any conditions of parole can result in revocation which means the offender will be returned to an institutional corrections setting. It is important to note that some states provide for sentences of "life without possibility of parole" which equates to incarceration until an inmate's death.

### **Specific Role and Responsibilities of Parole to Victims of Crime**

Parole officials' roles and responsibilities to victims should include but are not limited to Providing victims with an overview of the parole process including parole board hearings, community supervision, parole revocation and all related victim's rights and services.

Providing victims with the opportunity to submit victims impact statement to the parole board including allocation, written, audio or video statements.

### 8.9.a. Other Professionals

In addition to the core criminal justice system professionals discussed above various allied professionals have a significant impact on the criminal justice system response to involving victims. These include, but are not limited to:

Medical personnel

Mental health service providers.

Child protection professionals

Doctors nurses and other hospital personnel provide tremendous assistance to victims of crime. In addition to police officers, medical personnel who are often also available 24 hours a day, seven day's a week, are commonly the ones to come into contact with crime victims who have experienced some form of injury. In their roles, they are uniquely suited to make careful documentation of the condition of the victim and objectively and report these findings (much of which can be utilized as evidence in criminal cases).

Of course, the immediate and appropriate treatment of the victim is paramount; however, in the course of treatment, appropriate documentation provides useful information for prosecutors and victims in forwarding various criminal and other legal actions against the perpetrator. Of particular importance is the use of appropriate evidentiary collection kits to gather information in sexual assault and sexual abuse cases for later evidentiary use at trial. This needs to be done sensitively but competently, so that the trauma of the rape examination is minimized and evidence is accurately collected.

Mental health professionals are often involved in providing testimony at trial regarding the impact of crime on victims. In addition to treating victims, mental professionals who are expert in the evaluation of the effect of trauma on victims are often used. It is important to note that these allied professionals and experts are heavily relied upon by the courts to make de-

terminations regarding the damages and injuries incurred by the victims. These have important ramifications for the investigation and referral by law enforcement, by the handling of cases in prosecutor's offices and in sentences handled down by judges.

Child protection officials have a significant role in cases involving child abuse and neglect. Depending on the jurisdiction and the nature of the victimization, these cases may be handled in a criminal court, or family court system. In each of these systems, it is important that the child protection officials cooperate in developing the best investigation report possible for presentation at trial.

As almost all victims of crime may require some medical, mental health or other social services intervention, the coordination of these efforts within and complementary to the criminal justice system is crucial to providing the most victim-centered, victim oriented criminal justice system response possible.

## **8.10.IMPLEMENTING AND PROVIDING RESOURCES**

Providing for victim through statutory language is, in itself, sufficient for victims to be assured of receiving these rights, there by bringing balance back to the criminal justice system. The past decade of struggling for victims legislation, then realizing that new battles need to be fought in implementing and funding arenas, agency, politics, and other areas has been instructive to the contrary.

The dynamics of the criminal justice system can be brought back into balance and victims can become an integral part of this system, but only if we do not stop with legislation alone and follow through with implementation, funding, evaluation, monitoring, enforcement and improvement. .

## **8.11.CREATING AWARENESS (AMONG CRIMINAL JUSTICE PROFESSIONALS AND THE PUBLIC ON CRIMINAL ISSUES)**

**a. The Indian Society of Victimology, Departments of Criminology, conduct several awareness programmes on victim's rights. There have**

also been workshops conducted for the juvenile justice personnel to create awareness on the rights juvenile delinquents and destitute children.

Creation services for victims can seem daunting without knowing where help is available. There are numerous resources that provide information for victims which include free legal aid, shelter homes etc.

In addition to researching, different types of programme that might serve as models. national resources can also link victims to the direct services that already exist in their communities. These resources also provide information and referrals create public awareness about the rights of victims and services available to them and offer excellent resources for training and technical assistance. When creating a new programme it is important to contact existing local and state programmes to determine what services are currently being provided to victims and their eligibility criteria.

Media also has a growing role in highlighting violence against women and stresses the need for creating awareness among the victims about their rights so that they could protect themselves.

Especially on cases of violence against women, the media has played an important role in taking up issues and playing a role in combating violence against women.

**b. National Crime Victims Rights Week** and specific months for crimes such as domestic violence and sexual harassment can be observed every year. Workshops on specific crimes such a child abuse, sexual harassment and domestic violence should be held at colleges and community centres.

## **INDIA**

### **Indian Society of Victimology (ISV)**

A short list of its Activities and Publications

On 14<sup>th</sup> August 1992, many Social Scientists, Professors, Research Scholars, Students, and Criminal Justice Functionaries interested in case of

(Space for Hints)

victims of crime met at the Department of Criminology at the University of Madras in India as convened by Prof. Chockalingam and decided unanimously to start an organisation in the name of Indian Society of Victimology. Prof. K.Chockalingam was elected unanimously as President of the ISV. The ISV was formally inaugurated in a grand function by the illustrious Former Judge of Supreme Court of India Mr. V. R. Krishna Iyer on 18<sup>th</sup> September 1994.

### Symposia

The ISV in its short period since its genesis has organized the following symposia.

1. Female infanticide
2. Custodial Violence -Problems and Prevention
3. Victims of Road Accidents
4. Victims of Food Adulteration

The ISV has also brought out its quarterly News Bulletin for circulation among its members.

The ISV organized its first Biennial Conferences at Madras The themes deliberated in the conferences were

- . Theoretical issues in victimology
- . Human rights of the offenders vis -a vis victims
- . Rape and other forms of sexual victimization of women and children

### Series Victim Assistance Fund to Help Victims of Violent Crimes

The Government of Tamilnadu has set up a 'Victim Assistance Fund' in April 1995.

Tamilnadu is the first state in India to set up such a fund to ass its victims of violent crimes in pursuance of the recommendations of ISV.

## 8.12. GENDER - RELATED VIOLENCE IS GLOBAL

Up to 70 percent of female murder victims worldwide are killed by their male companions and as many as one-third of girls are forced into their first sexual experience according to a world organization report. The report urged countries to no longer treat violence solely as a "law and order issue"

Violence must instead be addressed by preventive public health measures the agency says. Violent acts are most often committed behind closed doors and go unreported according to the document making violence "one of the leading public health issues of our time"

While most of the data in the "world Report on violence and Health" is not new, the report is significant because it is the first time a United Nations agency has produced a major document that acknowledges the public health implications of violence beyond those injury and death particularly domestic and sexual violence that occurs in private said Etienne Krug, director of the department of injuries and violence prevention at the World Health Organization.

The United Nations first declared violence a world wide public health problem at the World Health Assembly in Geneva in 1996. Now armed with data on the extent of the problem and the nine recommendations to address it the World Health Organization will conduct an 18 month violence prevention campaign., fifteen countries have already been invited.

WHO and other U.N. agencies will certainly push national governments and the global community to think seriously about how violence against women can be prevented and the significant costs to women's rights and the economic costs to national economies.

Violence's Accounts for 7 percent of deaths among women and girls

The report tallies the ripple effects of physical sexual and psychological violence around the world from the immediate deaths and injuries to

long -lasting problems including permanent .physical disabilities and a range of mental behavioral and reproductive health troubles.

More than 1.6 million people each year die from violence, which is among the leading causes of death for those ages 15 to 44. In that age group, violence accounts, for 7 percent of deaths among women and girls and 14 percent among men and boys. But while males are more often both the victims and perpetrators of violence overall the "overwhelming burden" of sexual violence and at the hands of an intimate partner is borne by woman the report says.

The patterns of abuse women experience are strikingly universal. Most victims of physical aggression experience assaults over time and more than one type of abuse. The report states that in 48 surveys from around the world, between 10 percent and 69 percent of women report that they have been physically assaulted by a male partner. With 22 percent of U.S. women reporting they were assaulted by male partners. Nearly 25 percent of women may experience sexual violence by an intimate partner during their lives according to the report.

And these women continue to feel the after -effects of violence long after it's over. Victims of sexual violence can experience unwanted pregnancy, sexually transmitted diseases and other gynecological problems, as well as depression post -traumatic stress disorder and suicidal thoughts and behaviours. Domestic violence victims experience some of these same effects as well as gastrointestinal problems and chronic pain.

These statistic are "really shocking and disturbing"

The report also notes the growing recognition of elder abuse, which includes neglect, physical sexual and psychological abuse. Between 4 percent and 6 percent of all elderly people are abused in the home and violence that occurs in care facilities may be even more widespread the report says. Elderly women are at increased risk of abuse in cultures where as inferior social status and the type of violence they experienced is particular to their gender. In Tanzania, for example, 500 elderly women accused, ac-

cused of witchcraft are killed annually the report says. Older women also may be abandoned and have their property taken when a husband dies.

But violence is not an intractable social problem or an inevitable part of the human conditions the report says. It advocates that countries establish national violence - preventing plans that involve government as well as health, education, labour organization.

It also recommends steps including the promotion of primary prevention services such as parenting training and improving systems firearm safety; strengthening responses to violence, such as improved emergency response systems and integrating violence prevention into policies to promote gender and social equality.

That the report could strengthen the use of international human rights conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women, known as CEDAW which has been ratified by 170 countries.

### **Some perspectives on Torture Victims, Reparation and Mental Recovery**

This article surveys issues related to the pursuit of reparations by Victims of torture or their family members what is the legal right to reparation and how successfully has it been implemented in different countries? How does the pursuit of reparation relate to the needs of torture victims themselves, and what will be likely consequence if it is denied in part in or in whole? Are some forms of reparation fundamental for the successful recovery and reintegration of the torture victim, such that the denial of the right will advocates can we even permit ourselves to express support for a national process of guaranteed by international law? The article contends that national authorities committed to implementation the right to reparation should take as a starting point the needs and wishes of victims themselves. The forms of reparation recognized as international law are many and varied. It is unlikely that all victims will find the same form of reparation beneficial or desirable. National authorities should therefore facilitate access to



a variety of reparations including judicial compensatory, rehabilitative, retributive, declaratory and commemorative forms.

Even in those societies where reparations schemes are provided for violations committed by former regime there can be strong political disincentives to the adoption of a victim oriented approach. There are many ingrained social prejudices against victims, even in cases where the facts of the violation and the suffering caused are beyond dispute. Before laws or practices can be reformed it is sometimes necessary to confront attitudes that may exist among legislators or administrators that reflect the prejudices or ignorance of in secret and in spite of official denial, and for which many victims continue to suffer in silence.

### **Stalking victims**

Serial killers normally stalk their victims and besides them, there are many others who stalk. There are an estimated 2,00,00 serial stalkers in America, Stalking is an acquaintance crime. The majority of stalkers have been in relationship with their victims or are just acquaintance -neighbours friends or co -workers.

Stalking can be considered a type of antisocial behaviour bordering on sociopathy. In other ways it is like-long term rape. The following is a list stalking behaviours:

1. Watching or following someone
2. Making harassing phone calls or hang -ups
3. Sending harassing mail
4. Making threats to victim or victim's family ...
5. Vandalizing personal property. or a vehicle
6. Making repeated drive -bys
7. Sending anonymous love notes, flowers, gifts and so forth

Stalking always begins innocently in what appears to be a chance encounter. Initial contacts are at the most innocent of places -health clubs, church meetings, schools, day care centre etc., and then the relationship quickly becomes a nightmare. After about three weeks or so. The would be stalker typically asks that victim to marry him or blurts out some other bizarre or inappropriately timed statement. A professional stalkers will also have tried to take control of the victim's finances, the victim's vehicle, the victim's house or apartment, any and all possession or things that need fixed up or taken care of Stalkers try to move quickly (in order to be quicker than the criminal justice system) and are continually forming the victim into early decision yes or no situations and then they do what they want any way.

Many stalkers have major mental illness like **schizophrenia** manic - depression or **erotomania** and come from an abusive or emotionally barren family background with a poor sense of their own identity. They hold tight to some false belief that keeps them told to their victims. In erotomania, the stalkers delusional belief is that the victim loves him. Women who stalkers believe in fate, luck, destiny or soul mates. These types will pursue their victims long and hard not really caring about a relationship or even seeing their soul mate but coming to their attention via the media or notoriety one day. John Hinckley Jr who attempted to assassinate **American President Ronald** Regan to clarify his obsession with Jodi Foster is an example of this type.

In general, the more delusional, the stalker, the more likely they are to be unmarried and socially immature loners who are unable to establish or sustain close relationship with others. They rarely date and have had few, if any, sexual relationship. Since they are both threatened by and have had few, if any sexual relationships. Since they are both threatened but and yearn for closeness they often pick victims who are unattainable in some way; married women, a therapist, clergyman, doctor or teacher. Those in the helping professional are particularly vulnerable delusional stalkers. Any kindness shown to this kind of stalker will be blown out of proportion into a delusion of intimacy. What these stalkers cannot attain in reality is achieved through

fantasy. Some seek out victims of higher status (doctors, lawyers, teachers); others seek out celebrities. Celebrity stalkers often psychotically "hear or see" something in with words or appearances of the victim. They are often convicted that the celebrity is sending them cryptic message intended only for them to understand. Delusion of erotomania last an average of ten years.

A more sophisticated type is callused the cyber stalker/ Cyber stalkers typically conceal their identities and often to things like post fake web pages with doctored (on nude) photographs of their victims. They have usually researched their victims genealogy, hacked into their computer and know everything there is to know about their victim that is available via the internet. They sometimes hang out in chat rooms with sex or sophisticated screen names. Pedophiles, in particular, prey on new, inexperienced kids this way. Other are just angry, young people often paranoid, delusional, self-centered, arrogant, manipulative, extremely jealous and possessive. They are usually "control freaks" who enjoy manipulating other people. The stalker mentality cannot take no for an answer and cannot conceive that they might themselves be in the wrong. They are regulars in the online "flame wars" (wars of verbal abuse) and are about as rude and obnoxious as can be. Their idea of fun is to hurl obscene abuse at other users to try to upset them. They are extremely vengeful. Kiss of a cyberstalker and they will remember, and come back after you some day.

### **8.13. KILLING VICTIMS**

So far we've been talking about acquaintances or at least "people who think they know of each other. What about complete strangers? The phrase "strange crime" stems from Wolfgang's (1958) early research on homicide which divided murder into two categories; primary homicide, involving no strangers or acquaintances and secondary homicide involving assailants unknown to the victim. Rather than using the awareness phrase "secondary homicide" the terms "strange crime" caught on. Wolfgang and at least one of his students, Mare Riedel (1993) held to a belief that understanding stranger crime unlocked secrets about the development and functioning of a society. Stranger violence is behind most fear of crime. It's what people think of

when they talk about "street crime: Its what the criminal justice system spends the most resources on.

Most stranger violence tends to occur in certain geospatial locations where people compete for space and recognition. Most explanations are geographic or sociological as certain places or circumstances, with high anonymity, are seen as "ripe" for attacks on strangers. Lifestyle and routine activities are the primary victimology explanations for this kind of behaviour. Most serial killers prefer major transportation hubs or big cities but some prefer remote isolated locations. Stranger crime across the urban rural -dimension.

Other patterns exist with respect to age for example the juvenile adult crime pattern it's always the case that when the economy is doing good, we see terrible increase in juvenile crime (like school shooting) while adult crime is down. When the economy is bad, adult crime goes up and the juveniles start behaving again. This is why juvenile delinquency is sometimes called a crime of affluence. Another interesting phenomenon is the imitation hypothesis. This idea has been linked to major sporting events (super Bowl Sunday syndromes) that result in wife battering,. It seems that some kind of modeling occurs when violence's is portrayed on the media. It also occurs after rises in capital punishment (a legitimate of violence effect).

Another pattern is the urbanization (or modernization) these intended to explain the effects of rapid urban growth when there suddenly a rush of newcomers, immigrants or tourists to the neighbourhood or city. It also describes when rural areas becomes encroached upon by urban areas. Its known sometimes as the violence to theft ration, violence crime starts to skyrocket with the influx of people's then it drops dramatically (an upside down V pattern). Across this upside down V, there is a straight line going steadily upward intersecting. That straight line is' the property crime rate. Some historians have learned to precisely measure this pattern to mark population spurts. Violent crime rates fluctuate up and down (rape is fairly steadily, but it fluctuates) property crimes rates change more smoothly producing this distinctive intersected upside down V pattern.

There are a variety of explanation for stranger crime

Instinctual or evolutionary explanations are drawn from the field of biology and anthropology suggestive that makes build up vast amounts of aggressive sexual energy. And come prey upon more vulnerable human rights to eliminate competition for sexual partners or to hoard more 'stuff' than others in some kind of instinctual competitive instinct for survival.

Personality trait theories often include some mention of impaired neurological function, but psychologists also often link violence to watching TV, traumatic childhood experience, low intelligence, mental illness, impaired cognitive processes and abnormal personality structures. Stranger violence is an area where neurosis and psychosis are not all that uncommon

Drug, or psychopharmacological explanation have strong empirical support. Up to 80% of stranger violence is drug-related. The alcohol-violence link is the strongest. Drugs can entrap people into a life of crime (the enslavement hypotheses) escalate already existing criminal tendencies (the escalation hypothesis) and produce spin off violence related to the drug trade (systemic violence)

Gun, or firearm availability is a facilitating factor in most stranger violence. Most guns (80%) used in crime are stolen or obtained via an illegal black market. The mere presence of handguns is strongly related to stranger crime almost as if the trigger plugs finger instead of the other way around.

Family ineffective or dysfunction has been implicated in stranger violence. Extensive research implicates rejecting, ineffective or abusive parents who fail to set appropriate limits or use inconsistent discipline (up to and including abuse) often produce children who prey on strangers but this is more strongly associated with sociopathy.

Gang membership always requires that members embrace the use of violence. All other characteristics or motives for joining a gang are secondary to this primary valuation of violence. Nearly 100% of gang members possess a gun or other weapon. Gangs create stranger violence with initiation ceremonies, retaliations and turf protection.

Cultural values (sometimes called the subculture of violence thesis) posit that in large inner areas sub cultural norms develop that are at odds (disreputable crime) with society conventions and transitional ways of doing things and that these norms are stratified along racial and class lines. It is believed by many Criminologists that is the primary explanation behind the growth of urban violence.

The number of murders in the United States fluctuates between 20,000 -25,000 annually as many as 25% go unsolved as many 40% involve assailant unknown to the victim, and many others never come to justice perpetrators of stranger murder have a better than 80 percent chance of going unpunished.

## 8.14. HATE CRIME

Hate crime is bias motivated crime. A bias motivated crime is a crime in which the offender is motivated by a characteristic of the victims that identifies the victim as a member of some group toward which the offender feels animosity. The sociological literature on collective violence is helpful in explaining hate crime but much of it is restricted to analysis of related but different behaviour like mobs. Historically all revolving around the presumed social or symbolic status of the victim (that is victim sought out primarily because their social group is seen in some negative light).

1. Group competition over scarce resources
2. Long standing social rituals
3. Early socio psychological trauma

### Profiling victims

The selection of victims is different from one type of serial killer to the next. The more delusional (visionary) the serial killer is the important is the selection of an ideal victim the more comfort oriented the serial killer the more likely victim is an acquaintance; and of course the most common types of serial killers have an ideal victim type -blonde blue-eyed unmis-

takably female cheer leader variety. Its not just the way they look but the way walk carry themselves the tilt of their head and so on. The victim must be an ideal match with both the fantasy in the mind of the killer and the ritual which has been practiced by the killer before.

There are at least four common (4) hunting grounds for serial killers to find their ideal victim

1. Sin strips
2. Gay bars on single bar
3. Skid row areas
4. College campuses

All serial killers select a hunting ground there is an ample supply of potential victims overlapped by the offenders awareness map of activities that go in that area. It may or may not be important that this mental map the offender has in their head include a knowledge of police presence or escape routes (some offenders are quite daring) but it does matter that this (mental map include a fairly complete sense of the social and psychological relations that go in the area. In other words like a socialists the serial killer has to get a handle on what type of place it is who frequent it who talks to whom the traditions norms and folklore. They then must be capable of establishing a ruse or able to manufacturing a story that helps them "fit in that place. Hunting grounds converted into such activity spaces are called: Comfort zones and they are characterized technically by a distance decay function  $r$  originating outward from the primary hunting ground and decreasing in significance with distance away the activity space that matters not really the offenders. The zone of comfort means that both killer and victim have a high degree of comfort. Somewhere in between is going to be the abduction site.

### WORLD SOCIETY OF VICTIMOLOGY (WSV)

Victimology as institutionalized by the WSV may be defined as

"The scientific study of the extent, nature and cause of criminal vic-

timization, its consequence for the persons involved and the reaction thereto by society in particular the police, and the criminal justice system as well as voluntary workers and professional helpers".

This definition encompasses both penal or interactions and general or assistance-oriented victimology. At the three annual symposia of the WSA the debate on the objectives, scope and subjective matter of victimology has continued ever since. At the third and fourth symposia the Criminologist Cresses for example, argued for a clear distinction between scientific and humanistic victimology. Over the years tacit agreement was reached on the relationship between victimology as an academic undertaking and the services action or policy oriented victims movement.

While the WSV is a society for the advancement of specialized scientific research and should be cautious in taking position in political debates -it is fully recognized that much victimological research has significant implication for the provisions of services to victims and that the research is carried out partly for that reasons. The WSV has been instrumental in the developmental and subsequent of the declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power of the UN.

The society is also actively involved in follow up activities regarding this declaration such as publication of guide for policymakers and a handbook for practitioners. The conference theme in Amsterdam "Caring for victims. The role of the Community and the Professions" bore also witness to this commitment. More than current main stream Criminology, Victimology in an action-or-policy oriented field of study.

Many of the leading researchers in the field are or have been involved in promoting or setting up victim assistance organizations. At the same time many of these working in these organization have a scientific background and keen interest in objective information on the effectiveness of their services. Several officials of victim assistance organizations present keynote lectures or papers on development within these organizations which are interesting for a scientific viewpoint as well.



Within the WSV, the cross fertilization of theory and policy making and services - delivery is generally seen as positive and this features probably helps to explain the popularity victimology among students. Another bone of contention is whether victimology should confine itself to criminal victimization in the formal sense or accept the wider definition of general victimimology and encompass the victims of human rights abuses, accidents and disasters.

The political scientist R. Elias and others have in the past often argued that victimology should not define its subject matter in terms of criminal law but of human rights. According to this view, victimology should be the study of the human consequences of human rights abuses committed by either citizens or governments. Separovic has argued that victimology should extend its defections to include victims of human rights abuses. According to him victims of natural disasters must be included because their victimization are determined by a variety of natural forces outside man's will. Although some assistance organizations also offer services to victims of natural disasters sporadic opinion seems at least for the moment to prevail, within WSV. At the symposium in Amsterdam, victims of natural disasters received scant attention. The definition general victimology is generally seen as too wide for scientific purposes. Human rights abuses however are now definitely considered a central issue in victimology.

In fact, a fully day had been set aside a Amsterdam for the victims of abuses of power and there were more than thirty papers dealing with this topic. The United Nations General Assembly 1987 Declaration On the Basic Principles of Justice For Victims and Crime and Abuse of Power has been accepted by the WSV as a frame of reference. The subject matter of victimology can be defined in terms of the UN declaration.

Victims means persons who, individually or collectively have suffered harm including physical or mental injury, emotional suffering economic loss or substantial impairments of their fundamental rights through acts or omissions that are in violation of criminal laws, including those proscribing abuse

of power. This definition of the victim is relatively open. The scope of the subject matter of victimology will become wider if, what seems likely more forms of violence and abuse of power covered by national or international criminal legislation and or jurisprudence.

The victim's backgrounds may provide us with important information about past activities of lifestyle possibly leading directly to the generation of a suspect. The victim has traditionally been neglected in police investigations, and when a profile is requested, the victim information is often missing from the police reports. This should not be taken to mean that no police services use victim information rather until recently many have neglected to consider the victims past as important. Often the best way to approach a profile is through the victimology, and is one of the most beneficial tools in classifying and solving a violent crime.

In a perfect world, the following information should be available for the profiles on the victims before they begin to work the case.

- Physical traits
- Marital status
- Personal lifestyle
- Occupation
- Education
- Medical history
- Criminal justice system history
- Last-known activities including a time line of events
- Personal diaries (if known and available)
- Map of travel prior to offence
- Drug and alcohol history

- Friends and enemies
- Family background
- Employment history

This list is not 'exhaustive' in that it does not provide a total and absolute check list of those things that should be included in the victimology. It is a rough guide only and each case with a unique perpetrator and victim will require its own unique victimology. There are ;

Some important questions that should accompany any study of the victim, and these will hopefully lead not only to some answers but also more questions which should also be addressed. Again this list is not complete but should give an idea about what to look for and ask of the crime.

- Why was this particular person targeted?
- How was the person targeted or was the person a victim of opportunity?
- What are the chances of the person becoming a victim at random (and therefore opportunistic)?
- What risk did the Accused person take to commit the crime?
- How was the victim approached, restrained and or attacked?
- What was the victim's likely reaction to the attack?

The answers to these questions will provide some ideas about the Accused person's motive and possibly his signatures. From this, other examinations can be made about the accused's likely backgrounds including his occupation, his physical characteristics and social skills. Where possible inferences made by the profiler about the accused should be checked off against other inputs such as eyewitness accounts and the information available from the crime scene.

If the information "fits" it is more probable that the conclusions are correct if it does not fit, then further support should be sought or other possibilities explored.

## **NATIONAL ORGANISATION FOR VICTIM ASSISTANCE (NOVA)**

### **About The National Organization for Victim Assistance**

The National Organization for Victim Assistance is a private, non-profit, 501 (c)(3) organization of victim and witness assistance programmes and practitioners, criminal justice agencies and professionals, mental health professionals, researchers, former victims and survivors, and others committed to the recognition and implementation of victim rights and services. Founded in 1975, NOVA is the oldest national group of its kind in the worldwide victims' movement. NOVA's mission is to promote rights and services for victims of crime and crisis everywhere.

## **8.16. AMNESTY INTERNATIONAL**

Amnesty International (AI) is a worldwide campaigning movement that works to promote internationally recognized human rights. Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Our mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of our work to promote all human rights.

Amnesty International has more than a million members and supporters in over 140 countries and territories. Amnesty International is impartial and independent of any government, political persuasion or religious creed. Their work is financed largely by subscriptions and donations from a worldwide membership acting honestly and decisively. Finding the will to change is a much greater requirement than getting the blueprint to make the change. This document emerged twenty five years AFTER victim assistance became

reality in America, Canada, England, Germany. The Netherlands, Australia, New Zealand, and some other countries. The “**WILL**” to change preceded the “**BLUEPRINT**”. So how did these countries change without a blueprint? Obviously changes were made through trial and error-the hard way. Changing is usually unpopular, confusing, and it is always struggle. However, if you find the will to change and nurture it and create the process to implement the Basic Principles, this process will lead you to a better tomorrow where the condition will be much improved for victims of crime.

## **8.17.VICTIM ASSISTANCE IN HUMAN RIGHTS**

### **The International Society for Human Rights and Amnesty International**

The connection between Human Rights and Victimology is well established. This has a consequence for the Victim Assistance. No longer we deal solely with crime victim assistance groups as we find them in NOVA, COVA, INAVEM, NAVSS or ADO and Weiber Ring. Into the scope of victimology get groups like,

- The International Society of Human Rights its roof organization; in Germany and its different national chapters,
- Amnesty International with its international headquarters in England,
- The Red Cross with its international headquarters in Geneva.
- And many small organisations assisting victims in coping with the consequences of Human Rights violations including crime.

### **World Society of Victimology (WSV)**

The World Society of Victimology is a not for profit nongovernmental organization with consultive status category II with the ECOSOC of United Nations and the Council of Europe. Its members from around the world brought together by their mutual concern for victims include victim assistance practitioners, scientists, social workers, physicians, lawyers, university professors, and students.

The objectives of the WSV are to promote research on victims and victim assistance; advocacy of their interests throughout the world; to encourage interdisciplinary and comparative research in victimology; to advance the cooperation of international, regional, and local agencies, groups, and individuals concerned with the problems of victims.

The Origins of the WSV are rooted in the works of early victimologists and in the pioneering First International Symposium on Victimology organized by Israel Drapkin in Israel 1973. This symposium provided the first international forum for scholars, practitioners, and students to focus on victimology. Successive International Symposia on Victimology were organized 1976 in Boston (by Stephen Schafer) and in Munster (by Hans Joachim Schneider) 1979 where the WSV was formed and Hans Joachim Schneider became the first president.

WSV is a society of members from science, victim assistance, policy making and all other relevant strata of victim oriented activities. The members elect via mail ballots the Executive Committee, which serves; as the leading body of the society acting upon initiatives of the membership. The list of Honourary Members of WSV shows Willem Hendrik Nagel, Israel Drapkin, Henry Ellenberger and Benjamin Mendeisohn, the famous nestor of victimology.

The WSV Works with Intergovernmental Organisations as an active promoter of research about victims, assistance to victims, and respect for victim's rights. It pioneered a United Nations charter of victim's rights, which resulted in the General Assembly Resolution on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. WSV members representing any organizations in the ISPAC, the International Scientific and Professional Advisory Council to the Crime Programme of the UN and on its Board of Directors. WSV supports efforts to develop international mechanisms to prevent victimization, to counter act its effects, to facilitate crisis intervention and conflict resolution through mediation and other appropriate means and to compensate victims as a means to assist them. This is

#### **Check Your Progress**

7. What do you mean by Probation.
8. What is Institutional Correction.
9. Explain I.S.V.
10. Examine Killing Victims.
11. What is Hate Crimes.
12. Explain W.S.V.

achieved through various mechanisms, mainly through networking of persons concerned with theory and practice of victimology.

Close cooperation with United Nations is achieved too by WSVs accredited representative to the UN in New York, Geneva or Vienna. As Non Governmental Organization (consultive status II with the UN's ECOSOC), WSV is involved in the United Nations Congresses on Preventing Crime and Treatment of Offenders. WSV enjoys the membership and the cooperation of national and interregional associations of victimology, which were founded in Australasia, Croatia, Brazil, Greece, Japan, Korea and Poland.

## **8.18. SUMMARY**

In this lesson we have seen the Role and Responsibility of Professionals to Victims, in Criminal Justice system. First of all there are three Primary functions of law. They are 1. Protect life, Liberty and Property 2. Prevention of crime and 3. The arrest of the accused. We have learned about, prosecution, Trial and the Judiciary and also the responsibilities of the Judges to victims. We have also learned about probation and parole to the accused person after conviction so that he can be reformed.

## **8.19. KEYWORDS**

- |                             |  |
|-----------------------------|--|
| 1. Primary                  | - Firstly, Basically                             |
| 2. Prosecution              | - Legal Proceedings                              |
| 3. Trial                    | - Examining before judicial officer              |
| 4. Judiciary                | - Legal branch of Government.                    |
| 5. Probation                | - Release of the accused with some condition.    |
| 6. Institutional correction | - Jail - Shalter homes.                          |
| 7. Gynecological            | - Branch of Medicine dealing with care of women. |
| 8. Schizophrenia            | - a kind of mental disorder.                     |

## 8.20. ANSWER TO CHECK YOUR PROGRESS

1. Refer Para 8.1
2. Refer Para 8.2
3. Refer Para 8.3
4. Refer Para 8.4
5. Refer Para 8.5
6. Refer Para 8.6
7. Refer Para 8.7
8. Refer Para 8.8
9. Refer Para 8.11 (a)
10. Refer Para 8.13
11. Refer Para 8.14
12. Refer Para 8.14

## 8.21. MODEL QUESTIONS

1. Give an account of the role and responsibility of various professionals to victims.
2. Write an essay about the Correctional Administration in our country.
3. Write briefly about the Probation system in our country.
4. Elaborate the work of probation and parole officers.
5. What are the services available to protect the child?
6. What are the role and responsibilities of World Society of Victimology (WSV) or Natinal Organisation for Victim Assistance (NOVA)?



# **UNIT V**

## **HUMAN RIGHTS AND VICTIMOLOGY**

### **LESSON 9**

#### **HUMAN RIGHTS**

#### **INTRODUCTION**

Human rights refers to the concept of human beings as having universal rights, or status, regardless of legal jurisdiction or other localizing factors, such as ethnicity and nationality. As is evident in the United Nations Universal Declaration of Human Rights, human rights, at least in the Post War Period, are conceptualised as based on inherent human dignity, retaining their universal and inalienable character.

The existence, validity, and the content of human rights continue to be the subject to debate in philosophy and political science. Legally, human rights are defined in international law and covenants, and further, in the domestic laws of many states. However, for many people the doctrine of human rights goes beyond law and forms a fundamental moral basis for regulating the contemporary geo-political order. For them, they are democratic ideals.

#### **UNIT OBJECTIVE**

In this lesson we are going to study about the Human Rights. When Warren Hastings came to India - He thought Indians are "Zandus". So he gave Zandu code- Indians are not Human Beings according to him. So we have to know who is a Human Being?. What are the rights he can be given?. We have studied about slaves. Whether slaves are human beings? Whether non-citizens are human beings? Hence it is an interesting area to study about "Human Rights".

## UNIT STRUCTURE

Introduction

Unit Objective

Unit Structure

9.1. Human Rights in Criminal justice system.

9.2. Historical Development of Human Rights

9.3. Legislation

a. International Legislation

i) E. Roosevelt - Universal Declaration

ii) International Bodies

b. Regional Legislation

9.4. Philosophy of Human Rights.

a) Justification of human Rights

b) Criticism and debate

c) Who has to uphold Human Rights

d) Abuse of Human Rights

9.5. Universal declaration of Human Rights.

9.6. Protection of Human Rights Under the Constitutional Law of India.

9.7. The International Legal framework.

(a) Mental and psychological consequences of Torture

(b) Attitude towards victims.

- 9.8. Reparation as “therapy”
- 9.9. Consequences of failure to obtain reparation
- 9.10. Gaps between National Reparation scheme and rights at International Law.
- 9.11. Summary
- 9.12. Keywords
- 9.13. Answers to check your Progress
- 9.14. Model Questions

## **9.1. HUMAN RIGHTS IN CRIMINAL JUSTICE**

Human Rights are universal, and civil, political, economic, social and cultural rights belonging to all human beings, including members of religious, linguistic and ethnic minority groups. Members of minorities are entitled to the realization of all human rights and fundamental freedoms on equal terms with others in society, without discrimination of any kind.

## **9.2.HISTORICAL DEVELOPMENT OF HUMAN RIGHTS**

The concept of human rights has existed under several names in European thought for many centuries, at least since the time of **King John of England**. After the king violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, or Great Charter, which enumerates a number of what later came to be thought of as human rights. Among them were the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and be free from excessive taxes. It established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct.

The political and religious traditions in other parts of the world also proclaimed what come to be called human rights., calling on rulers to rule justly and compassionately, delineating limits on their power over the lives, property, and activities of their citizens.

In 1789 the people of **France** overthrew their monarchy and established the first French Republic. Out of the revolution came the "Declaration of the Rights of Man".

The term natural rights eventually fell into disfavour, but the concept of universal rights took root. Philosophers such as Thomas Paine, John Stuart Mill, and Henry David Thoreau expanded the concept. Thoreau is the first philosopher who used the term, "human rights", and does so in his treatise, Civil Disobedience. This work has been extremely influential on individuals as different as **Leo Tolstoy, Mahatma Gandhi, and Martin Luther King**, Gandhi and King, in particular, developed their ideas on non-violent resistance to unethical government actions from this work.

Other early proponents of human rights were English philosopher John Stuart mill, in his Essay on Liberty, and American political theorist Thomas Paine in his essay, The Rights of Man.

The middle and late 19<sup>th</sup> century saw a number of issues take center stage, many of them issues we in the late 20<sup>th</sup> century would consider human rights issues. They included slavery, serfdom, brutal working conditions, starvation wages, child labour, and, in the Americas, the "Indian Problem", as it was known at the time. In the United States, a bloody war over slavery came close to destroying a country founded only eighty years earlier on the premise that, "all men are created equal". Russia freed its serfs the year that war began. Neither the emancipated American slaves nor the freed Russian serfs saw any real degree of freedom or basic rights for many more decades, however.

For the last part of the nineteenth and first half of the twentieth century, though, human rights activism remained largely tied to political and religious groups and beliefs Revolutionaries pointed at the atrocities of gov-

ernments as proof that their ideology was necessary to bring about change and end the government's abuses. Many people, disgusted with the actions of governments then pointed at bombings, strike-related violence, and growth in violent crime and social disorder as reasons why a stern approach toward dissent was necessary.

Neither group had any credibility with the other and most had little or no credibility with uninvolved citizens, because their concerns were generally political, not humanitarian. Politically partisan protests often just encouraged more oppression, and uninvolved citizens who got caught in the crossfire usually cursed both sides and made no effort to listen to the reasons given by either.

Nonetheless many specific civil rights and human rights movements managed to affect profound social changes during this time. labour unions brought about laws granting workers the right to strike consisting minimum work wages etc., This movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi's movement to free his native India from British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the U.S. Civil Rights Movement.

In 1961 a group of lawyers, journalists, writers, and others, offended and frustrated by the sentencing of two Portuguese college students to twenty years in prison for having raised their glasses in a toast to "**Freedom**" in a bar, formed Appeal for Amnesty, 1961. The appeal was announced on May 28 in the **London Observer's Sunday** Supplement. The appeal told the stories of six "**prisoners of conscience**" from different countries and of different political and religious backgrounds, all jailed for peacefully expressing their political or religious beliefs, and called on governments everywhere to free such prisoners. It set forth a simple plan of action, calling for strictly impartial, non-partisan appeals to be made on behalf of these prisoners and any who, like them, had been imprisoned for peacefully expressed beliefs.

The response to this appeal was larger than anyone had expected. The one-year appeal grew, was extended beyond the year, and Amnesty International and the modern human rights movement were both born.

The modern human rights movement didn't invent any new principles. It was different from what preceded it primarily in its explicit rejection of political ideology and partisanship, and its demand that governments everywhere, regardless of ideology, adhere to certain basic principles of human rights in their treatment of their citizens.

This appealed to a large group of people, many of whom were politically inactive, not interested in joining a political movement, not ideologically motivated, and didn't care about creating "the perfect society" or perfect government. They were simply outraged that any government dared abuse, imprison, torture, and often kill human beings whose only crime was in believing differently from their government and saying so in public. They (natively, according to many detractors) took to writing letters to governments and publicizing the plights of these people in hopes of persuading or embarrassing abusive governments into better behaviour.

Like the early years of many movements, the early years of the modern human rights movement were rocky. "**Appeal for Amnesty, 1961**" had only the most rudimentary organization. The modern organization named Amnesty International gained the structure it has mostly by learning from mistakes. Early staff members operated with no oversight, and money was wasted. This led to establishing strict financial accountability. Early staff members and volunteers got involved in partisan politics while working on human rights violations in their own countries. This led to the principle that AI members were not, as a matter of practice, asked or permitted to work on cases in their country. Early campaigns failed because Amnesty was misinformed about certain prisoners. This led to the establishment of a formidable research section and the process of "adoption" of prisoners of conscience only after a thorough investigation phase.

The biggest lesson Amnesty learned, and for many the distinguishing feature of the organization, however, was to stick to what it knew and not go outside its mandate. A distinguished human rights researcher once said, "Amnesty is an organization that does only one or two things, but does them extremely well, "Amnesty International does not take positions on many issues which many people view as human rights concerns (such as abortion) and does not endorse or criticize any form of government. While it will work to ensure a fair trial for all political prisoners, it does not adopt as prisoners of conscience anyone who has used or advocated violence for any reason. It rarely provides statistical data on human rights abuses, and never compares the human rights records of one country with another. It sticks to work on behalf of individual prisoners, and work to abolish specific practices, such as torture and the death penalty.

A lot of people found this too restrictive. Many pro-democracy advocates were extremely upset when the organization dropped Nelson Mandela (at the time a black South African anti-apartheid activist in jail on trumped-up murder charges) from its list of adopted prisoners, because of his endorsing a violent struggle against apartheid. Others were upset that Amnesty would not criticize any form of government, even one which **(like Soviet-style Communism, or Franco-style fascism)** appeared inherently abusive and incompatible with respect for basic human rights. Many activists simply felt that human rights could be better served by a broader field of action.

Over the years combinations of these concerns and others led to formation of other human rights groups. Among them were groups which later merged to form Human Rights Watch, **the first of them being Helsinki Watch in 1978**. Regional human rights watchdog groups often operated under extremely difficult conditions, especially those in the Soviet Block. Helsinki Watch, which later merged with other groups to form Human Rights Watch, started as a few Russian activists who formed to monitor the Soviet Union's compliance with the human rights provisions in the Helsinki accords. Many of its members were arrested shortly after it was formed and had little chance to be active.

Other regional groups formed after military takeovers in Chile in 1973, in East Timor in 1975, in Argentina in 1976, and after the Chinese Democracy Wall Movement in 1979.

Although there were differences in philosophy, focus, and tactics between the groups, for the most part they remained on speaking terms, and a number of human rights activists belonged to more than one.

Recognition for the human rights movement, and Amnesty International in particular, grew during the 1970s. Amnesty gained permanent observer status as an NGO at the United Nations. Its reports became mandatory reading in legislatures, state departments and foreign ministries around the world. Its press releases received respectful attention, even when its recommendations were ignored by the governments involved. In 1977 it was awarded the Nobel Peace Prize for its work.

Unfortunately, the Nobel Peace Prize didn't impress the governments Amnesty most wanted to get through to. That year the Argentine military dictatorship reportedly claimed that Amnesty was a front organization for the Soviet KGB. This supposedly occurred the same week that the Soviet government claimed Amnesty was run by the U.S. CIA, to the amusement of human rights activists and, presumably, embarrassment of certain people in Argentina and the Soviet Union.

## **9.3.LEGISLATION**

### **9.3.a.International legislation**

Main article: International human rights instruments. Where it has been adopted, human rights legislation commonly contains:

- . Security rights that protect people against crimes such as murder, massacre, torture and rape.
- . Liberty rights that protect freedoms in areas such as belief and religion, association, assembling and movement.



Political rights that protect the liberty to participate in politics by expressing themselves, protesting, voting and serving in public office.

Due process rights that protect against abuses of the legal system such as imprisonment without trial, secret trials and excessive punishments.

Equality rights that guarantee equal citizenship, equality before the law and non-discrimination.

Welfare rights (also known as economic or social rights) that require the provisions of education and protections against severe poverty and starvation.

Group rights that provide protection for groups against ethnic genocide and for the ownership by countries of their national territories and resources.

### **9.3.a) (i) Eleanor Roosevelt with the Spanish text of the Universal Declaration in 1949.**

Appalled by the barbarism of the Second World War and the Holocaust, the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948. While not legally binding, it urged member nations to promote a number of human, civil, economic and social rights, asserting these rights are part of the "foundation of freedom, justice and peace in the world". The declaration was the first international legal effort to limit the behaviour of states and press upon them duties to their citizens following the model of the rights duty duality.

Many states wanted to go beyond the declaration of rights and create legal covenants which would put greater pressure on states to follow human rights norms. Because some states disagreed over whether this international covenant should contain economic and social rights (which usually require a greater effort to fulfil on the part of individual states), two treaties were prepared.

In 1966 and 1976 respectively, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights came into force. With the Universal Declaration of Human Rights these documents form the International bill of rights.

.....recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

-Preamble to the Universal Declaration of Human Rights, 1948

Since then several other pieces of legislation have been introduced at the international level:

- . Convention on the Prevention and Punishment of the Crime of Genocide (entry into force: 1951) [1].
- . Convention against Torture (entry into force: 1984) [2]
- . Convention on the Elimination of All Forms of Racial Discrimination (entry into force: 1969) [3]
- . Convention on the Elimination of All Forms of Discrimination Against women (entry into force: 1981) [4]
- . Convention on the rights of the Child (entry into force: 1989) [5]
- . Rome Statute of the International Criminal Court (entry into force: 2002)

With the exception of the non-derogable human rights (the four most important are the right to life, the right to be free from slavery, the right to be free from torture and the right to be free from retroactive application of penal laws), the UN recognises that human rights can be limited or even pushed aside during times of national emergency -although "the emergency must be 'actual, affect the whole population and the threat must be to the very existence of the nation. The declaration of emergency must also be a last resort and a temporary measure" [6]. Conduct in war is governed by International Humanitarian Law.

### **9.3.a) (ii) International bodies**

The International Covenant on Civil and Political Rights created an agency, the Human Rights Committee to promote compliance with its norms. The eighteen members of the committee express opinions as to whether a particular practice is a human right violation, although its reports are not legally binding.

A modern interpretation of the original Declaration of Human Rights was made in the Vienna Declaration and Programme of Action [7], adopted by the World Conference on Human Rights in 1993. The degree of unanimity over these conventions, in terms of how many and which countries have ratified them vary, as does the degree to which they are respected by various states. The UN has set up a number of bodies to monitor and study human rights, under the leadership of the UN High Commissioner for Human Rights (OHCHR).

### **9.3.b. Regional Legislation**

There are also many regional agreements and organisations governing human rights including the European Court of Human Rights, which is the only international court with jurisdiction to deal with cases brought by individuals (rather than states); the African Commission on Human and People's Rights; Inter-American Commission on Human Rights; Cairo Declaration on Human Rights in Islam; and the Inter-American Court of Human Rights.

### **History of Human Rights**

UR-Nammu, the king of Ur created what was arguably the first legal codex in ca 2050 BC. Several other sets of laws were created in Mesopotamia including the Code of Hammurabi, (ca. 1780 BC) which is one of the best preserved examples of this type of document. It shows rules and punishments if those rules are broken on a variety of matters including women's rights, children's rights and slave rights.

The Persian Empire (in what is now Iran) established unprecedented principles of human rights in the 6<sup>th</sup> century BC under the reign of Cyrus the

Great. After his conquest of Babylon in 539 BC, the king issued the Cyrus Cylinder, discovered in 1879 and recognized by many today as the first human rights document. The cylinder declared that citizens of the empire would be allowed to practice their religious beliefs freely. The cylinder also abolished slavery, so all the palaces of the kings of Persia were built by paid workers in an era where slaves typically did such work. These two reforms were reflected in the biblical books of Chronicles and Ezra, which state that Cyrus released the followers of Judaism from slavery and allowed them to migrate back to their land. The cylinder now lies in the British Museum, and a replica is kept at the United Nations headquarters.

Several 17<sup>th</sup> and 18<sup>th</sup> century European philosophers, most notably John Locke, developed the concept of natural rights, the notion that people possess certain rights by virtue of being human. Though Locke believed natural rights were derived from divinity since humans were creations of God, his ideas were important in the development of the modern notion of rights. Lockean natural rights did not rely on citizenship nor any law of the state, nor were they necessarily limited to one particular ethnic, cultural or religious group.

S. Declaration of Independence ratified by the Continental Congress on July 4, 1776. Two major revolutions occurred that century in the United States (1776) and in France (1789). The United States Declaration of Independence includes concepts of natural rights and famously states "that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness .

Declaration of the **"Rights of man and of the Citizen"** approved by the National Assembly of France, August 26, 1789.

Similarly, the Declaration of the Rights of Man and of the Citizen defines a set of individual and collective rights of the people. These are held to be universal -it sets forth fundamental rights not only of French citizens but acknowledges these rights to all men without exception.

Philosophers such as **Thomas Paine, John Stuart Mill and Hegel** **expanded** on the theme of universality during the 18<sup>th</sup> and 19<sup>th</sup> centuries. In 1831 William Lloyd Garrison wrote in a newspaper called *The Liberator* that he was trying to enlist his readers in "the great cause of human rights" so the term human rights probably came into use sometime between Paine's *The Rights of Man* and Garrison's publication. In 1849 a contemporary, Henry David Thoreau, wrote about human rights in his treatise *On the Duty of Civil Disobedience* [8] which was later influential of human rights and civil rights thinkers.

Many groups and movements have managed to achieve profound social changes over the course of the 20<sup>th</sup> century in the name of human rights. In Western Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labour. The women's rights movement succeeded in gaining for many women the right to vote.

## **9.4. PHILOSOPHY OF HUMAN RIGHTS**

### **Types of human rights**

Human rights are sometimes divided into negative and positive rights. Negative human rights, which follow mainly from the Anglo-American legal tradition, denote actions that a government should not take: These are codified in the United States Bill of Rights, the English Bill of Rights and the Canadian Charter of Rights and Freedoms and include right to life and security of person, freedom from slavery; equality before the law and due process under the rule of law; freedom of movement; and freedoms of speech, religion and assembly.

Positive human rights mainly follow from the Rousseauian Continental European legal tradition and denote rights that the state is obliged to protect and provide. Examples of such rights include: the rights to education, to a livelihood, to legal equality. Positive rights have been codified in the Universal Declaration of Human Rights and in many 20<sup>th</sup> century constitutions.

Another categorization, offered by Karel Vasak, is that there are three generations of human rights: first generation civil and political rights (right to life and political participation), second -generation economic, social and cultural rights (right to subsistence) and third-generation solidarity rights (right to peace, right to clean environment). Out of these generations, the third generation is the most debated and lacks both legal and political recognition. Some theorists discredit these divisions by claiming that rights are interconnected. Arguably, for example, basic education is necessary for the right to political participation.

#### 9.4.(a) Justification of human rights

Numerous theoretical approaches have been advanced to explain how human rights become part of social expectations. The biological theory considers the comparative reproductive advantage of human social behaviour based on empathy and altruism in the context of natural selection. Other theories hold that human rights codify moral behaviour, which is a human, social product developed by a process of biological and social evolution (associated with Hume) or as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). This approach includes the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls).

On the other hand, natural law theories set human rights on the "natural;" moral order-that derives from religious precepts such as common understandings of justice and the belief that moral behaviour is a set of objectively valid prescriptions. Some have used religious texts such as the Bible and Quran to support human rights arguments.

Yet others have attempted to construct an "interests theory" defence of human rights. For example the philosopher John Finnish argues that human rights are justifiable on the ground of their instrumental value in creating the necessary conditions for human well-being. Some interest-theorists also justify the duty to respect the rights of other individuals on grounds of self interest (rather than altruism or benevolence). Reciprocal recognition and respect of-rights ensures that one's own will be protected.

#### Check Your Progress

1. Trace the Historical development of Human Rights.
2. Write briefly about international Legislation.
3. Write Shortly about Roosevelt's Universal Declaration.
4. Write Briefly about Regional Legislation on Human Rights.

Ultimately the term "human rights" is often itself an appeal to a transcendent principle, not based on existing legal concepts. The term "humanism" refers to the developing doctrine of such universally applicable values. The term "human rights" has replaced the term "natural rights" in popularity, because the rights are less and less frequently seen as requiring natural law for their existence.

#### **9.4.(b) Criticism and debate**

One of the arguments made against the human rights agenda is that it suffers from cultural imperialism. In particular, some see human rights as fundamentally rooted in a politically liberal outlook which, although consensually accepted in Western Europe and North America, is not necessarily taken as standard elsewhere. An appeal is often made to the fact that influential human rights thinkers, such as John Locke and John Stuart Mill, have all been Western and indeed that some were involved in the running of Empires themselves. The cultural imperialism argument achieves even greater potency when it is made on the basis of religion. Some histories of human rights emphasise the Judeo-Christian influence on the agenda and then question whether this is in keeping with the tenets of other world religions.

In reply to the cultural imperialism argument, if taken too far, can itself be accused of engaging in cultural relativism. If one accepts that all viewpoints and moral frameworks are equally valid then one cannot condemn any behaviour, however outrageous or horrific, with conviction. Those who support human rights often recount a history of the agenda that emphasises the influence of many cultures and religions. They explain how human rights can in practice be used as a defence against imperialism and a tool for self-determination.

One way out of the cultural imperialism and relativism debate is to argue that the body of human rights exists in a hierarchy or can undergo derogation. The relationship between different rights is complex since it can be argued that some are mutually reinforcing or supportive. For example, political rights, such as the right to hold office, cannot be enacted without a

decent education. Whether the latter should therefore be included as a first-generation right is a debated point.

#### **9.4. (c) Who has the duty to uphold Human Rights ?**

A final set of debating points revolves around the question of who has the duty to uphold human rights. Human rights have historically arisen from the need to protect citizens from abuse by the state and this might suggest that all mankind has a duty to intervene and protect people wherever they are. Divisive national loyalties, which emphasise differences between people rather than their similarities, can thus be seen as a destructive influence on the human rights movement because they deny people's innately similar human qualities. But others argue that state sovereignty is paramount, not least because it is often the state that has signed up to human rights treaties in the first place. Commentators positions in the argument for and against intervention are influenced by whether they believe human rights are largely a legal or moral duty and whether they are of more cosmopolitan or nationalist persuasions.

#### **9.4.(d) Abuse of Human Rights**

Human rights abuse is abuse of people in a way that violates any fundamental human rights. It is a term used when a government violates national or international law related to the protection of human rights.

According to the Universal Declaration of Human Rights, fundamental human rights are violated when:

- \* A certain race, creed, or group is denied recognition as a "person". (Article 2)
- \* Men and women are not treated as equal. (Article 2)
- \* Different racial or religious groups are not treated as equal. (Article 2)
- \* Life, liberty or security of person are threatened. (Article 3)



(Space for Hints)

- \* A person is sold as or used as a slave. (Article 4)
- \* Cruel, inhuman or degrading punishment is used on a person (such as torture or execution). (Article 5).
- \* Punishments are dealt arbitrarily or unilaterally, without a proper and fair trial. (Article 11)
- \* Arbitrary interference into personal, or private lives by agents of the state. (Article 12)
- \* Citizens are forbidden to leave their country. (Article 13)
- \* Freedom of speech or religion are denied. (Article 18 & 19)
- \* The-right to join a trade union is denied. (Article 23)
- \* Education is denied. (Article 26)

## **9.5.UNIVERSAL DECLARATION OF HUMAN RIGHTS**

Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.

### **Preamble**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.

### **Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

## Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

## Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

## Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

## Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

## **Article 15**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

## **Article 16**

1. Men and women of full age, without any limitation due to race, the right to marry and to found a family. They are entitled equal rights as to marriage doing nationally or region have marriage and at its dissolution.
2. Marriage shall be entered into only with free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

## **Article 17**

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

## **Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

## **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

## **Article 20**

1. Everyone has the right to freedom of peaceful assembly and' association.
2. No one may be compelled to belong to an association.

## **Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

## **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

## **Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

## **Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

## **Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

## **Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

## **Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## **Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

## **Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

## **Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

## **9.6. PROTECTION OF HUMAN RIGHTS UNDER THE CONSTITUTIONAL LAW OF INDIA**

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

### **Article 19 Protection of certain rights regarding freedom of speech etc.**

- (1) All citizens shall have the right.
  - a) to freedom of speech and expression;
  - b) to assemble peaceably and without arms;
  - c) to form associations or unions;
  - d) to move freely throughout the territory of India;
  - e) to reside and settle in any part of the territory of India; and
  - f) omitted
  - g) to practise any profession; or to carry on any occupation, trade or business.

### **Article 20 Protection in respect of conviction for offences**

- 1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- 2) No person shall be prosecuted and punished for the same offence more than once.

- 3) No person accused of any offence shall be compelled to be a witness against himself.

## **Article 21 Protection of life and personal liberty**

No person shall be deprived of his life or personal liberty, except according to procedure established by law.

## **Article 22 Protection against arrest and detention in certain cases**

- 1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- 2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- 3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.
- 4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.
- 5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the



order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

- 6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.
- 7) Parliament may by law prescribe-
  - a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
  - b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
  - c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

## **Article 32 Remedies for enforcement of rights conferred by this Part**

- 1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- 2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

- 3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- 4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

### **Protection Under the Code of Criminal Procedure**

**Section 50 Person arrested to be informed of grounds of arrest and of right to bail**

**Section 54 Examination of arrested person by medical practitioner at the request of the arrested person.**

**Section 56 Person arrested to be taken before Magistrate or officer in charge of police station**

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

**Section 57 Person arrested not to be detained more than twenty-four hours**

**Section 58 Police to report apprehensions**

Officers in charge of police stations shall report to the District Magistrate, or if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

**Section 300 Person once convicted or acquitted not to be tried for same offence**

- 1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such of-

fence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.

- 2) A person acquitted or convicted of any offence, may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.
- 3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened,
- 4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
- 5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first mentioned Court is subordinate.
- 6) Nothing in this Section shall affect the provisions, of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code. Explanation: The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purpose of this Section.

## Section 327 Court to be open

1) The place in which any Criminal Court is held for the purpose of inquiring into, or trying any offences shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Section 436 In what cases bail to be taken

Section 437 When bail may be taken in case of non bailable offence

Section 438 Direction for grant of bail to person apprehending arrest

- 1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Sessions for a direction under this section, and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.
- 2) When the High Court or the Court of Sessions makes a direction under sub-section (1), it may include such conditions in such direction in the light of the facts of the particular case, as it may think fit, including,
  - i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
  - ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
  - iii) a condition that the person shall not leave India without the previous permission of the Court;
  - iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that Section.

- 3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

**S.C./S.T. Protection against Atrocities Act, 1989**

**THE SCHEDULED CASTES AND THE SCHEDULED TRIBES  
(PREVENTION OF ATROCITIES) ACT, 1989**

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental there to.

**CHAPTER II -OFFENCES OF ATROCITIES**

**Punishments for offences of atrocities**

**Punishment for neglect of duties** -Whoever; being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, willfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

**Enhanced punishment for subsequent conviction** -Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

## Forfeiture of property of certain persons.

1) Where a person has been convicted of any offence punishable under this chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

## Chapter III -Entertainment

### Removal of person likely to commit offence

- 1) Where the Special Court is satisfied, upon a complaint or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in "Schedule Areas" or "tribal areas", as referred to in Article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond and the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period not exceeding two years, as may be specified in the order.
- 2) The Special Court, shall, along with the order under sub-section (1.), communicate to the person directed under that sub-section the grounds on which such order has been made.
- 3) The Special Court may revoke the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

Procedure on failure of person to remove himself from area and enter thereon after removal. -

- (1) If a person to whom a direction has been issued under Section 10 to remove himself from any area-

- a) fails to remove himself as directed, or
  - b) having so removed himself enters such area within the period specified in the order, otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.
- 2) The Special Court may, by order in writing, permit any person in respect of whom an order under Section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified.

## **9.7. THE INTERNATIONAL LEGAL FRAMEWORK**

The right to reparation for victims of a wrongful act is a well-established principle of international law. This obligation also applies in respect to international human rights and humanitarian law. Since World War Two, the obligation to provide reparation to victims of human rights violation has been reiterated in a large number of treaties and declarations, many of which have by now been ratified by a majority of UN Member States. As regards the crime of torture, the right to reparation is grounded in Articles 2, 3 & 7 of the International Covenant on Civil and Political Rights, Article 39 of the Convention on the Rights of the child, and in Article 14 of the Convention Against Torture (CAT).

Article 14 guarantees the right of torture victims to obtain reparation, including redress, fair and adequate compensation and the means for as full rehabilitation as possible. The CAT does not define "redress", compensation" or "rehabilitation", neither does it contain a strict definition of who is considered to be a "Victim". However, two UN documents that have attempted to do so are the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power (the Victims Declaration)- adopted by

the UN draft Basic Principles and Guidance on the Right to a Remedy and Reparation. The Victims Declaration and the draft Basic Principles are indicative of a general trend in human rights reporting over the past 30 years, which has been to move away from treatment of violations as abstract phenomena, towards an increasing emphasis on the subjects (both victims and perpetrators) of the violations. On the one hand is the Victim, whose rights have been violated, who continues to suffer the consequences of the wrongful act, and whose right to obtain full reparation should be facilitated by the state. On the other is the perpetrator, who must be brought to justice. in part to afford. reparation to the victim, but also to satisfy States Parties obligations under the CAT to investigate, prosecute and punish.

The Preamble to the draft Basic Principles note that by recognizing the right of victims to benefit from remedies and reparation, the international community keeps faith and human solidarity with victims, survivors and future human generations, and reaffirms the international legal principles of accountability, justice and the rule of law. Further, "By adopting a victim-oriented point of departure, the community, at local national and international levels, affirms its national solidarity and compassion with victims of violations... as well as with humanity at large.

### **9.7.(a) Mental and psychosocial consequences of torture**

Torture, the deliberate infliction of severe pain by one human being against another, leaves particular kinds of mental and psychological scars. Torture victims commonly report feelings of fear, guilt, shame, disillusionment, are also common in other psychological disorders that do not have their origins in violations of human rights. What is unique about torture and other forms of organized violence, however, is that the trauma they induce includes the immoral act of a perpetrator. This moral dimension continues to affect the victims, perpetrators and entire society until steps have been taken to restore justice.



### **9.7.(b)Attitudes towards victims**

As discussed, all states are obliged to provide reparation to victims of torture. A precondition for successful reparation is that those responsible for making and interpreting laws and policies within the national administration are empathetic to the rights and needs of victims. Yet there exists in many societies deep seated prejudices towards the weak or powerless, and this is particularly so in the case of persons who claim to be psychologically damaged and seek compensation or support. Even where structures for reparation have been put into place by the state, the granting of reparation may be compromised by the way in which claims assessors perceive trauma and suffering. Danieli describes pervasive societal reactions to Holocaust survivors after the liberation as comprising obtuseness, indifference, avoidance, repression and denial. The accounts of the survivors were too horrifying for many people to listen to or believe. Victims were faced with the pervasively held myth that they had actively or passively consented to their own suffering or that they had themselves committed crimes in order to survive. As has been the experience of victims in other periods and other regions, they were also told that everyone had suffered, that it was time to forgive and forget and to get on with their lives.

The effect of these attitudes, if unchecked, can be to reinforce victims' silence and impede healing and reintegration; what Rojas has called 'frozen mourning'. Many studies have documented the transmission of the psychological effects of torture to the second and even third generation. In such cases we can concur with William Faulkner that, 'The past is never dead. It's not even past'.

### **9.8. REPARATION AS 'THERAPY'**

A number of commentators believe that the pursuit of reparation has a therapeutic benefit for the victim, in addition -or as a supplement -to more targeted forms of medical or psychosocial treatment and support. Carmichael et al. take the view that seeking reparation is an important part of the rehabilitation process, both for the individual and for the society in which the

torture occurred. Health professionals also prefer a holistic approach to rehabilitation, including consideration and treatment of the immediate family of the victim as well as community based programs targeting the general community. Torture victims come.. more often than not, from the most vulnerable groups in society and need outside assistance. Where resources permit, rehabilitation programs offer a variety of variety of services to survivors, both social and legal, with a view to reintegrating the person to the fullest extent possible. It has been said that reparation is both a process and a result. The pursuit of reparation can be empowering for a victim, allowing them to overcome feelings of isolation and pain in a public process closely linked to the disclosure of events and the naming of the guilty.

The question arises as to whether some forms of reparation may be more therapeutically beneficial than others. Several commentators have considered the relative merits of civil and criminal proceedings. Gordon has argued that victims have a more active role in the initiation and resolution of civil proceedings than they would have in a criminal proceeding, and that presenting and negotiating a claim can reinforce many of the elements addressed in a formal rehabilitation process. McFarlane, on the other hand, warns of potential problems in both the civil and, criminal justice systems. Many victims perceive legal processes to lack empathy, a problem perhaps most prevalent in civil litigation, where court officials and advocates are unused to dealing with victims of torture or other violent crime.

Roht-Arriaza and Rojas both emphasize that procedures serving to promote truth and justice are essential to successful psychological closure. Traumatized people have an instinctive need to tell their stories and have their experience validated. Silence and deception are common in countries where torture has taken place; victims typically suffer in silence and their plight is both unknown and unacknowledged by the community. Public truth-telling must be undertaken before real healing can occur. Allan & Allan go further, to say that survivors must be given the opportunity to meet the people who abused them if they wish to do so. This can help to create empathy between survivors and perpetrators, an aspect of restorative justice that may

be even more important than the prosecution of perpetrators. However, there is a potential conflict here between the needs and wishes of the individual victim and the (perceived) needs of the society.

## **9.9. CONSEQUENCES OF FAILURE TO OBTAIN REPARATION**

Could the unsuccessful pursuit of a remedy leave a person in a worse position, mentally and emotionally, than if they had done nothing? This question arises in particular when seeking judicial or quasi-judicial remedies. In both cases, the victim is likely to be required to recount the violation on a number of occasions, placing them at risk of further trauma. No research appears to have been done on this issue to date. What seems to be important, bearing in mind that all legal processes involve an element of calculated risk, is for helpers, legal advisers or counsellors to be particularly responsive to their client's wishes. Victims of torture or other serious human rights abuses should not be encouraged to pursue a remedy if they no longer wish to do so. The conviction of the helper that the need to obtain (formal) justice is paramount may in fact, not conform to the victim's own needs and wishes. Another area of concern arises when the state refuses, to provide the form of reparation sought by the victim. There is very strong support, among both health and legal professionals, for the view that other forms of reparation will be inadequate if the perpetrators of violations are not brought to justice. Sveaass & Lavik believe that to grant amnesty and permit impunity is to perpetuate political violence. In these circumstances the experiences of individual Victims are denied or invalidated, and psychological reactions of worthlessness or disempowerment, and even cognitive distortions, may follow. Many others, including Kordan, Rojas and Danielei share this view, which is also in accordance with State Party obligations under all relevant human rights treaties, not least of all the CAT. Van Boven has emphasized that if state authorities fail to investigate the facts and establish criminal responsibility, it may prove impossible for victims or their relatives to seek and receive redress and reparation.

In the case of truth commissions, which primarily serve collective goals of national reconciliation rather than individual goals of redress, the role played by the victim can be particularly problematic. He or she is expected to recount the violation suffered with a view to creating a public record of the event, and while this truth-telling may have a reparative value for many victims, it may also be traumatic. Nevertheless, a small number of dissenting views do exist, both within the health profession and the general human rights community. Allan & Allan believe that the South African Truth and Reconciliation Commission was relatively successful as a therapeutic tool, despite the amnesties granted and the fact that it primarily addressed collective goals rather than individual needs or wishes. Cobban, however, is scathingly critical of the International Criminal Tribunal for Rwanda (ICTR) as a means for delivering justice to victims of the Rwandan genocide. Seven years after its establishment, the ICTR had delivered just nine judgements, despite a staff of over 800 and an annual budget of around US\$ 90 million. Even taking into account those prosecutions carried out by Rwandan courts, the number of cases processed each year has been around 1500-2000; just a fraction of the over 125,000 detained genocide suspects. Cobban believes that the imposition of an exclusively criminal justice solution on the Rwandan people has denied them the benefit of restorative justice that has been used with success in South Africa and Mozambique, elements of which would have been better suited to promoting social stability and long-term reconciliation.

## 9.10. GAPS BETWEEN NATIONAL REPARATION SCHEME AND RIGHTS AT INTERNATIONAL LAW

Can human rights advocates ever express support for reparation schemes that exclude one or more of the elements of reparation guaranteed at international law? Can we afford to endorse the kinds of political compromises that lie behind the establishment of truth commissions or national compensation schemes side by side with de jure or de facto amnesties for perpetrators of torture? These are very difficult questions. On the one hand, we know that impunity will prolong, or in some cases deepen, the mental scars borne by the victim or by members of their families. On the other,

### Check Your Progress

5. Write a Short notes on Philosophy of Human Rights.
6. Who has to uphold Human Rights.
7. Briefly write about Mental and Psychological Consequences of Torture.
8. Write about Reparation as "therapy"

would it have been possible to achieve a peaceful democratic transition in South Africa or El Salvador, for instance, if the new governments had instigated a policy of prosecuting all perpetrators, rather than granting amnesties?

Morocco offers an interesting example, in that a means for addressing past repression-including the establishment of an arbitration tribunal to assess reparation claims -was initiated under an ongoing regime. As at June 2002, the tribunal there had already awarded US\$ 59 million in compensation to over 800 claimants-victims of arbitrary detention and relatives of disappeared persons. It has been criticized on several grounds; its mandate does not extend to cases of torture; very little information has been made available to relatives about the fate of disappeared persons; and, most significantly, the tribunal is not mandated to investigate or prosecute those responsible for violations. On the contrary, a decree granting a general amnesty to all former violators has been approved, but has not yet entered into force. In their defence, the Moroccan authorities say that what has been achieved in Morocco to date is without precedent in the Arab world, and for that matter, in several European countries with similar histories of political repression, arbitrary detention and use of torture.

One element often overlooked is the right to rehabilitation and reintegration. In those few countries such as Morocco or Bulgaria where reparation schemes have been established for former victims of torture, the emphasis has tended to be on judicial or compensatory procedures, rather than social or medical ones. Rehabilitation and reintegration is often seen as being the responsibility of civil society organizations, or alternatively, an issue that can be addressed by the existing public health system without any specific state involvement. Yet in order for the right to rehabilitation to be realistic there has to be a corresponding duty on the state to ensure should be urged to promote acquisition of the appropriate knowledge and skills within the relevant legal, medical, psychological and social professions, and to support the establishment of treatment facilities and services.

## 9.11.SUMMARY

Despite a plethora of international standards on reparation, the needs and wishes of the victim continue to be treated with secondary importance by many national authorities. Truth commissions primarily seek to address collective goals rather than to respond to individual needs. Even reparation programmes, where established, have been limited in their scope, preferring to balance a complex set of economic, social and political considerations. Looking at a variety of countries in which governments have attempted to address past repression and provide reparation to victims of torture and members of their families, it seems that there is an unavoidable tension between political considerations and the requirements of international law.

More thought needs to be given to ways in which criminal and restorative justice can be combined without compromising the right of victims to reparations. There is potential for enhanced dialogue between health and legal professionals, human rights advocates, and victims support groups, drawn together by the common conviction that the perspective of the victim is paramount.

## 9.12. KEY WORDS

1. Natural Rights                      - Rights given by Nature
2. Universal Declaration        - To the entire world.
3. International covenants    - Law of the International field.
4. International Bodies        - Organs of the U.N.O.
5. Magna Carta                      - Great Rights (Bill of Rights) by this  
The king of England lost many rights.

## 9.13. ANSWER TO CHECK YOUR PROGRESS

1. Refer Para 9.2.
2. Refer Para 9.3

(Space for Hints)

3. Refer Para 9.3. a) (1)

4. Refer Para 9.3. b)

5. Refer Para 9.4.

6. Refer Para 9.4.(c)

7. Refer Para 9.7.(a)

8. Refer Para 9.8.

#### **9.14. MODEL QUESTIONS**

1. What do you know about Human Rights? Elaborate the salient features of UN Declaration of Human Rights.
2. Define Human Rights. Trace out the historical development of Human Rights.
3. Give an account of Fundamental Rights as highlighted in the Constitution of India.
4. Briefly describe the salient features in the Criminal Procedure Code.

## **UNIT - V**

### **LESSON 10**

#### **CHILD LABOUR LAWS**

##### **INTRODUCTION**

In this lesson we are going to the complex issue of child Labour. Is it worth investigating? How it developed as a big issue? We know that children are being exploited and forced into labour. They do not receive education which is crucial to their own development. Many worry about this problem. Why they are worried about this problem. We know that Labour is not a commodity to be purchased. India is one among the largest nations plagued by the problem of child labour. There are nearly 115 Million Children are working in India.

##### **UNIT OBJECTIVE**

We are interested to know what are the causes of Child labour in India? How the central Government Policies affect it? How the state Government Policies affect it? Analysis to these questions may lead to the Answer - a Possible solution may be got. What types of Child labour exist in India. The child works and gets Money and happily spend it. They do not give it to their Parents. Only in some families - due to poverty - send the child to work. Whether education help to solve the problem? Whether it should be compulsory education? or vocational education necessary ?



## **UNIT STRUCTURE**

Introduction

Unit Objective

Unit Structure

10.1. Child Labour

10.2. Who is a Child Labour

10.3. The Direction of the Supreme Court of India

(a) Compensation Received

10.4. Child Labour Laws in India

10.5. What are Children doing in terms of work.

10.6. How necessary is child labour to families in India

10.7. What role does poverty play?

10.8 Government of India - Policy on Child Labour

10.9. Education and its effect

10.10. Summary

10.11. Key words

10.12. Answer to Check Your Progress

10.13. Model Question.

### **10.1. CHILD LABOUR**

(Under the Child Labour (Prohibition and Regulation) Act, 1986)

The Child Labour Act, bans the employment of children, below 14 years of age in specified occupations and processes which are considered

unsafe and harmful to child workers and regulates the conditions of work of children in employment's where they are not prohibited from working.

It also lays down penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children.

The act extends to the whole of India. The Child Labour Protection and Regulation Act of 1986 applies to all Establishments and workshops wherein any industrial process is carried on.

An "establishment" includes a shop, commercial establishment, workshop, farm, residential hotel, and restaurant, eating house, theatre or other place of public amusement or entertainment.

## **10.2. WHO IS A CHILD ?**

'Child' means a person who has not completed his fourteenth year of age.

### **Occupations and processes where child labour is prohibited**

No child should be employed or permitted to work in any occupations set forth below, or in any workshop wherein any of the processes listed in Part B of the schedule is carried on, except a workshop wherein the process is carried on by the occupier with the aid of his family or a Government recognized/aided school.

Any occupation connected with

- i. Transport of passengers, goods or mails by railway,
- ii. Cinder picking, clearing of an ash pit or building operation in the railway Premises.
- iii. Work in a catering establishment at a railway station, involving the movement of a vendor.

- iv. Work relating to the construction of a railway station, which is done in close proximity to or between the railway lines.
- v. A port authority within the limits of any port.
- vi. Work relating to selling of crackers and fireworks in shops with temporary licences, and
- vii. Abattoirs / Slaughter Houses.

### **10.3.THE DIRECTIONS OF THE SUPREME COURT OF INDIA**

Extracts from the Affidavit of the Secretary to the Ministry of Labour, Government of India in the Supreme Court of India on December 4, 1997 on the action taken by the Government to implement the direction given by the Supreme Court on December 10, 1996.

- The first phase of survey has been completed in all the State Government and Union Territories except in the State of Nagaland.
- Most of the State Governments had appointed Inspectors under Section 17 of the Child Labour (Prohibition & Regulation) Act 1986 and wherever it was considered necessary, officers from other Departments were also mobilized, pooled and notified as such so that the directions of the Hon'ble Court could be fully complied with.
- The State Governments, where employment of child labour in hazardous occupations has been found, have already initiated necessary action for the constitution of the Child Labour Rehabilitation-cum-Welfare Funds at the district level in accordance with the guidelines circulated by the Ministry of Labour. While in some districts, funds have already been constituted, in others the process is under way.

**10.3.(a)** According to information received so far, the amount of **compensation received** from the offending employers has been as under:

(i) Andhra Pradesh Rs. 40,000

(ii) Haryana Rs. 80,000

(iii) Karnataka Rs. 60,000

(iv) Madhya Pradesh Rs. 20,000

(v) Maharashtra Rs. 200,000

(vi) Orissa Rs. 100,000

(vii) Punjab Rs. 120,000

(viii) West Bengal Rs. 80,000

Most of the State Governments and Union Territories which have replied to the questionnaire and where employment of children in hazardous occupations has been found, have reported that besides taking action for collection of compensation @ Rs. 20,000 per child employed by the offending employer, penal action has also been initiated against the employer.

That besides taking action to comply with the directions of the Supreme Court, as contained in the aforesaid judgement, the Central Government has also initiated action to amend the Child Labour (Prohibition and Regulation) Act of 1986 to make it more stringent and effective, on the basis of suggestions received from the State Governments. Necessary amendment proposals are being actively considered by the Government of India.

That besides initiating action to amend the Child Labour (Prohibition and Regulation) Act 1986, Government of India has also identified a number of new occupations and processes such as gem cutting & polishing, zari making, leather goods manufacturing, agarbatti manufacturing, lock making, sports goods manufacturing etc to maintain a few, for inclusion in the Schedule

to the Act so that employment in these additional occupations and process could be prohibited under Section 3 of the Act instead of being regulated.

That during the course of discussions with the representatives of ILO, it was revealed that the ILO could consider funding a second survey. Accordingly, a proposal for seeking financial assistance for conducting the survey has been sent to the International Labor Organisation in Geneva.

That the Hon'ble Court would very kindly appreciate that the task relating to withdrawal of children from hazardous occupations and their rehabilitation, which is difficult and sensitive, cannot be the work of one single Ministry or Department or Agency. Instead it is the task of all concerned Ministries/Departments in the Central and State Governments, Central Employers' & Trade Union Organisations, NGOs.etc That this Hon'ble Court would also kindly appreciate that this age-old social evil cannot be eradicated by one single stroke. For grappling with and overcoming the problem of child labour in the country, which is of a formidable dimension, sustained efforts on the part of each one and everyone who is directly or indirectly concerned in the matter would need to be taken. During the last two years, the Central Government has started the National Child Labour Projects in 64 additional child labour endemic districts (taking the total number of projects to 76) and at present 105000 children are enrolled in the special schools which are being run under these projects. This respondent humbly submits that efforts would continue to be made at the Central and State level to give effect to the directions of this Hon'ble Court in letter and spirit with the ultimate objective of eliminating child labour in all its forms even though it may be some/what difficult to precisely indicate a specific time frame by which child labour in all industries, occupations and processes can be eliminated lock, stock and barrel.

#### **10.4. CHILD LABOUR LAWS IN INDIA**

Through a notification dated May 26, 1993, the working conditions of children have been regulated in all employment which is not prohibited under the Child Labour (Prohibition and Regulation) Act. Following up on a

preliminary notification issued on October 5, 1993, the government has also prohibited employment of children in occupation processes like abattoirs / Slaughter houses, printing, cashewnut decaling and processing, and soldering.

Children perform a variety of jobs: some work in factories, making products such as carpets and matches; others work on plantations, or in the home.

For boys the type of work is very different because they often work long hours doing hard physical labour outside of the home for very small wages.

The Government has made efforts to prohibit child labour by enacting Child labour Laws in India including the 1986 Child Labour (Prohibition and Regulation) Act that stated that children under fourteen years of age could not be employed in hazardous occupations. This act also attempted to regulate working conditions in the jobs that it permitted, and put greater emphasis on health and safety standards.

However, due to cultural and economic factors, these goals remain difficult to meet. For instance, the act does nothing to protect children who perform domestic or unreported labour, which is very common in India. In almost all Indian industries girls are unrecognized labourers because they are seen as helpers and not workers. Therefore, girls are not protected by the law. Children are often exploited and deprived of their rights in India, and until further measures are taken, many Indian children will continue to live poverty.

### **India's child labour laws failing**

Children are often victims of labour exploitation.

India is coming under increasing pressure to take action over massive human rights abuse against child workers and indentured labourers.

Investigations show that it has more child labourers than any other

country and that millions of adult labourers still work in near slave like conditions despite laws being passed to stop it.

For example, government-owned land is leased out for quarrying to private contractors -who are meant to have signed up to India's state of the art labour laws.

But the men working the sites have no safety gear at all, no helmets, shoes, masks, and claim that they are being paid only half of what they had been promised.

### **Victims opinion**

Ram Yadav was until a few years ago a bonded labourer, condemned to work off a debt run up by his parents.

He was freed because a charity went to court on his behalf.

Now he goes round checking on conditions of other workers.

"I am telling .you, the laws are there for you, but the politicians and the mine owners get together to make sure you have to work under conditions which are no better than for animals," he says.

No serious safety equipment could be seen anywhere through the quarries.

### **Flaw in Government**

The finger of blame is firmly pointed at vested interests -including those in government -who are making money out of it -and therefore there is no political will to stop it.

India has world standard labour legislation, but in practice it has more slave and abused labourers than any other country.

The whole system is riddled with corruption, with politicians benefiting from it.

Amazingly VK Sharma, in the office of the local labour commission, agreed to the accusation.

### **Care centers**

The allegation of government neglect in this issue becomes more stark at a near-by care centre for children who recently were victims of abusive labour.

They are aged between 10 and 15, and are now learning how to play again and going through special trauma counseling.

The centre is run -not by the government, but by a charity, which often has to go to the courts to get a child freed from work.

### **Why children should not go for employment?**

Child labour prevents the emergence of a social consensus that children have rights and the right to holistic childhood, development.

Development policies of the government to fulfill the interests of the process of globalization and corporate giants are contributing to the increase in child labour. While poverty is a reason for child labour, continuance of child labour perpetuates poverty, exploitation and inequalities. It is a fact that the number of children out of school and in some forms of employment is increasing. The condition of children is worsening. Child labour continues despite all efforts because state policies, market forces and employers continue to push / attract children to the labour market and because the continuance of poverty is beneficial to the political class and the employing class.

Child labour is exploitation of poverty for profits. This perpetuates child labour and violates children's rights.

Child labour is exploitation of wage labour. It is super exploitation and depresses adult wages. It creates increased profits for employers, since employers decide to use children as cheap labour. It is profitable to exploit poverty and keep families poor.



Children in employment can be easily coerced by their employers; their association / unionizing prevented and they can be even beaten and threatened. They are easily denied their right to participation in decision making, collective bargaining, organizing strikes and other protest actions.

The belief that a child in employment enhances family income is false. Examined on a cost - benefit scale the contribution of children to family income from their employment is marginal, when compared to loss of education, forced early adulthood, poorer wages for adults and damage to children's health.

Children in employment are denied their right to leisure, rest, entertainment, games and fun.

The belief by employers that children in employment become responsible workers and that they learn more through working than in school is false. Yes the school system needs to be radically restructured in terms of learning, quality, skills and knowledge. Employment of children must be considered as destruction of childhood and creation of premature and immature adulthood.

Child labour in any form is hazardous. Besides denying childhood and contributing to premature adulthood it creates very serious health hazards among children and stunts their childhood development.

Education is important for the future development of children. Employment of children denies the child's fundamental right for quality, joyful, free and compulsory education upto Std. X. Employment of children is a denial of their fundamental constitutional right. It makes the implementation of several Government incentives for children going to schools redundant.

Child Labour denies adults employment, even for women. It keeps adult real wages lower than minimum wages divides workers and prevents their unionization and bargaining power. Increasing prices leads to worsening family incomes and poverty.

Employment of Children - is illegal. It violates the convention on the Rights of Child (Art. 32) constitution of India (Art 24 read with Art 21, 23, 45, 39 (c) and (f) and 41 and 47. Child Labour Act 1986 and several other Labour Legislations including the supreme court verdict 1996 and directives of Supreme court with regard to **Right to Education**.

Making Children learn their traditional family skills among artisan families cannot be at the cost of quality school education. All skills whether traditional or new can be integrated after basic Eight years of learning. This argument of children learning skills at very early ages very after also serves to promote the exploiting class using the products of artisan keeping the product value low and forcing artisans family to continue to live in poverty and misery.

Child labour in India: Causes, Government Policies and the Role of Education

The problem of child labour in India

How many children are involved?

It is difficult to cite a current figure for the number of children engaged in child labour. This difficulty is attributed to the fact that the Indian Government "has been negligent in its refusal to collect and analyze current and relevant data regarding the incidence of child labour. As of 1996, official figures continue to be based on 1981 census figures" (Human Rights Watch 1996, 122).

### 10.5. WHAT ARE CHILDREN DOING IN TERMS OF WORK?

The 1981 Census of India divided child labour into nine industrial divisions: I. Cultivation, II. Agricultural Labour, III. Livestock, Forestry, Fishing, Plantation, IV. Mining and Quarrying, V. Manufacturing, Processing, Servicing, and Repairs, VI. Construction, VII. Trade and Commerce, VIII. Transport, Storage and Communication, and IX Other Services. The major-

#### Check Your Progress

1. Who is a Child Labour.
2. What is the Direction of Supreme Court.
3. Write briefly about Child Labour Laws in India.

ity of rural child workers (84.29%) are employed in cultivation and agricultural labour (divisions I and II). Urban child labourers are distributed difficultly, 39.16% of them are involved in manufacturing, processing, servicing and repairs. Although more children are involved in agriculturally related jobs human rights organisations tend to focus on the manufacturing types of child labour because most children in these situations are bonded labourers. Bonded labour "refers to the phenomenon of children working in conditions of servitude in order to payoff a debt" (Human Rights Watch 1996, 2). Estimates place the number of bonded child labourers in India at close to one million (International Labour Organisation 1992, 15).

Causes of child labour in India and Governmental policy dealing with it.

### **10.6. HOW NECESSARY IS CHILD LABOUR TO FAMILIES IN INDIA?**

Child labour is source of income for poor families. A study conducted by the ILO Bureau of Statistics found that "Children's work was considered essential to maintaining the economic level of households, either in the form of work for wages, of help in household members for economic activity elsewhere" In Some cases, the study found that a child's income accounted for between 34 and 37 percent of the total household income. This study concludes that a child labourer's income is important to the livelihood of a poor family. There is a questionable aspect of this study. It was conducted in the form of a survey, and the responses were given by the parents of the child labourers. Parents would be biased into being compelled to support their decision to send their children to work, by saying that it is essential. They are probably right: for most poor families in India, alternative sources of income are close to non-existent. There are no social welfare, systems such as those in the West, nor is there easy access to loans, which will be discussed.

What is apparent is the fact that child labourers are being exploited, shown by the pay that they receive. For the same type of work, studies show that children are paid less than their adult counterparts. A comparison

of child wages to adult wages obtained by a study of child workers in the Delhi region of India. Although 39.5% of employers said that child workers earn wages equal to adults, if the percentage of employers admitting that wages are lower for children are added up, a figure of 35.9% is found. This figure is significant when taking the bias of employers into account. Employers would have been likely to defend their wages for child workers, by saying that children earn the same wages as adults. The fact that no employees stated children earned more than adults, should also be noted. Other studies have also concluded that "children's earnings are consistently lower than those of adults, even where there two groups are engaged in the same tasks".

### **10.7.WHAT ROLE DOES POVERTY PLAY?**

The percentage of the population of India living in poverty is high. In 1990, 37% of the urban population and 39% of the rural population was living in poverty (International labour Organisation 1995, 107). Poverty has an obvious relationship with child labour, and studies have "revealed a positive correlation -in some instances a strong one -between child labour and such factors as poverty" (Mehra-Kerpelman 1996). Families need money to survive, and children are a source of additional income. Poverty itself has underlying determinants, one such determinant being, caste. When analyzing the caste composition of child labourers Nangia (1987) observes that, "if these figures are compared with the caste structure of the country, it would be realized that a comparatively higher proportion of scheduled caste children work at a younger age for their own and their families' economic support". Scheduled caste (lower caste) children tend to be pushed into child labour because of their family's poverty. Nangia (1987) goes on to state that in his study 63.74% of child labourers said that poverty was the reason they worked.

The combination of poverty and the lack of a social security network form the basis of the even harsher type of child labour -bonded child labour. For the poor, there are few sources of bank loans, governmental loans or other credit sources, and even if there are sources available, few Indians living in poverty quality. Here enters the local moneylenders; for an average

of two thousand rupees, parents exchange their child's labour to local moneylenders (Human Rights Watch 1996). Since the earnings of bonded child labourers are less than the interest on the loans, these bonded children are forced to work, while interest on their loans accumulates. A bonded child can only be released after his / her parents makes a lump sum payment, which is extremely difficult for the poor (Human Rights Watch 1996, 17). Even if bonded child labourers are released, "the same conditions of poverty that caused the initial debt can cause people to slip back into bondage" (International Labour Organisation 1993, 12).

Even though poverty is cited as the major cause of child labour, it is not the only determinant. Inadequate schools, a lack of schools, or even the expense of schooling leaves some children with little else to do but work. The attitudes of parents also contribute to child labour; some parents feel that children should work in order to develop skills useful in the job market, instead of taking advantage of a formal education.

## **10.8.GOVERNMENT OF INDIA - POLICY ON CHILD LABOUR**

From the time of its independence, India has committed itself to be against child labour. Article 24 of the Indian constitution clearly states that "No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment" Article 39 (e) directs State policy such "that the health and strength of workers and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength" These show that India has always had the goal of taking care of its children and ensuring the safety of workers. The Bonded Labour System Act of 1976 fulfills the Indian Constitution's directive of ending forced labour. The Act "frees all bonded labourers, cancels any out-standing debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded labourers by the state" (Human Rights Watch 1996, 30). In regard to child labour, the Indian government implemented the Child Labour Act in 1986. The purpose of this act is to "prohibit the em-

ployment of children who have not completed their 14th year in specified hazardous occupations and processes”

A recent advance in government policy occurred in August of 1994, when then **Prime Minister Narasimha Rao** announced his proposal of an **Elimination of Child Labour Programme**. This programme pledges to end child labour for two million children in hazardous industries as defined in the **Child Labour Act of 1986**, by the year 2000. The programme revolves around an incentive for children to quit their work and enter non-formal schooling:

All of the policies that the Indian Government has in place are in accordance with the Constitution of India, and all support the eradication of Child Labour. The problem of child labour still remains even though all of these policies are existent. Enforcement is the key aspect that is lacking in the government's efforts. No enforcement data for child labour laws are available: “A glaring sign of neglect of their duties by officials charged with enforcing child labour laws is the failure to collect, maintain, and disseminate accurate statistics regarding enforcement efforts” (Human Rights Watch 1996, 131).

### 10.9. EDUCATION AND ITS EFFECTS (on child labour)

What is the current state of education in India in comparison to other developing countries?

India's state of education lacks effectiveness in yielding basic literacy in the population. It has been observed that “the overall condition of the education system can be a powerful influence on the supply of child labour” (Grootaert and Kanbur 1995, 193). The 1991 Census of India shows that 64% of males and 39% of females are literate (The World Bank 1995, 113) -an increase of 17% and 14% respectively from the 1981 census (Census of India 1981 cited in Weiner 1991, 11). These increases seem significant, but India's overall literacy rate of 40.8% lags behind other developing countries such as China.

#### Check Your Progress

4. What are Children doing in terms of Work?
5. What role does Poverty Play.
6. Examine the Govt's Policy on Child Labour.

What is the reason for these high dropout rates and poor school survival rates?

One possible argument given by Nangia (1987) is that “the pressing need for the child’s earnings as well as low perceived advantages of school” cause parents to withdraw children from school and deposit them in the labour force. In this case, poverty and the inadequacy of the school system play significant roles in causing child labour, but also affect each other. Poverty forces high dropout rates, and thus no matter how good schools are, school survival rates and literacy rates will still remain low.

### **Compulsory Education**

The concept of compulsory education, where all school aged children are required to attend school, combats the force of poverty that pulls children out of school. Policies relating to compulsory education not only force children to attend school, but also contribute appropriate funds to the primary education system, instead of higher education.

The Indian state of Kerala distinguishes itself from the rest of India with its educational system. The government of Kerala allocates more funds to education than any other state, with a per capita expenditure of 11.5 rupees compared to the Indian average of 7.8 rupees (Weiner 1991, 175). It is not only the expenditure of more funds, but where the funds are used that make the difference. Kerala spends more money on “mass education than colleges and universities” (Weiner 1991, 176). No correlation exists between expenditure on education and literacy when comparing different countries because some countries, such as India, spend more funds on higher education than primary education (Weiner 1991, 160). Kerala’s emphasis on primary education has led to a dropout rate of close to 10%, a literacy rate of 94% for males and 86% for females (The World Bank 1995, 113), and a low child work participation rate of 1.9% (in 1971) compared to the Indian average of 7.1% in 1971 (Weiner 1991, 175). Weiner (1991) points out that “The Kerala Government has made no special effort to end child labour. It is the expansion of the school system rather than the enforcement of labour legislation that has reduced the amount of child labour.”.

Article 45 of the Constitution of India states that “The State shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years” A National Policy on Education was adopted in 1986, and it addresses the need to “expand and improve basic education” (The World Bank 1995, 124). Recently, the Central Government implemented The District Primary Education Program (DPEP), in an attempt to act on the recommendations of the National Policy on Education. The programme involves the subsidizing of approved investments, by the Government of India. The Central Government will provide a grant of 85% on expenditures by the states (The World Bank 1995,123).

## **Conclusion**

Child labour is a significant problem in India. The prevalence of it is shown by the child work participation rates which are higher in Indian than in other developing countries.

The major determination of child labour is poverty. Even though children are paid less than adults, whatever income they earn is of benefit to poor families. In addition to poverty, the lack of adequate and accessible sources of credit forces poor parents to engage their children in the harsher form of child labour -bonded child labour. Some parents also feel that a formal education is not beneficial, and that children learn work skills through labour at a young age. These views are narrow and do not take the long term developmental benefits of education into account. Another determinant is access to education. In some areas, education is not affordable, or is found to be inadequate. With no other alternatives, children spend their time working.

The Constitution of India clearly states that child labour is wrong and that measures should be taken to end it. The Government of India has implemented the Child Labour Prohibition and Regulation Act in 1986 that outlaws child labour in certain areas and sets the minimum age of employment at fourteen. Though policies are in place that could potentially reduce the



incidence of child labour, enforcement is a problem. If child labour is to be eradicated in India, the Government and those responsible for enforcement need to start doing their jobs, Policies can and will be developed concerning child labour, but without enforcement they are all useless.

The state of education in India also needs to be improved. High illiteracy and drop out rates are reflective of the inadequacy of the educational system. Poverty plays a role in the ineffectiveness of the educational system. Dropout rates are high because children are forced to work in order to support their families. The attitudes of the people also contribute to the lack of enrollment -parents feel that work develops skills that can be used to earn an income, while education does not help in this matter. Compulsory education may help in regard to these attitudes. The examples of Sri Lanka and Kerala show that compulsory education has worked in those areas.

Child labour cannot be eliminated by focusing on one determinant for example education, or by brute enforcement of child labour laws. The Government of India must ensure that the needs of the poor are filled before attacking child labour. If poverty is addressed, the need for child labour will automatically diminish.

### **Child abuse under scanner**

The study will focus on sexual exploitation of schoolchildren in Chennai.

1. CHENNAI : A study on sexual abuse of schoolchildren in Chennai is being undertaken by Tulir, a charitable organisation. The 9-month study has a grant from **“Save Children, Sweden”**.

Any behaviour committed for sexual gratification by an older or powerful person is defined as child sexual abuse (CSA).

Studies in Delhi, Mumbai and Kolkata suggested prevalence rates between 46 and 71 per cent, suggesting India might have the highest CSA rate in the world.

Without enough Information, especially in south' India, it is easy to overlook this issue, says **Ms. Vidya Reddy**, Tulir executive director. "People are using the lack of information to sweep the entire issue under the carpet. Indians do not want to discuss sexual issues. They know what is going on, but they would like to believe otherwise. Once the results of this study are released, the issue is out in the open and it is harder for people to deny it." She says.

Tulir's research targets XI standard students and involves an awareness session on the CSA and the purpose of the study, followed by an anonymous, self-conducted questionnaire.

Students will be given booklets on personal safety. Tulir hopes to show the extent the problem and plans to use the feedback to create awareness of the design effective prevention and intervention programme, "Hopefully, school will see their responsibility here and help and help us with this project," says Alankar, a project facilitator **Ms. Vidya Reddy** says unlike many developed countries, India has no comprehensive law on CSA. "Currently CSA is dealt with, both within families and in the legal and social context, in a manner that leads to constant victimization of the abused child.

## 10.10. SUMMARY

In India Child labour will go on for ever as long as Ganes - River goes on with its pious beauty. The People living in upper status want the lower status people to continue to live only with their hard-work by hands and legs. The upper class people would not allow the lower class people to use their brain and live a life. The lower class people are brutes. They still think that the upper class will appreciate them for their hard work. They do not know that they are being exploited. Child labour will continue until the need for it is removed. India has sent 101 Rockets to the space. But they have not set their minds on "**Child labour**". As long as child Labour exist India will not develop. It will be a labours den.

### **10.11. Key words**

1. Labour                      - Hard Work.
2. Child Labour            - a child works for his lively hood
3. Employee                - One who works for others for money.
4. Employer                - Who gives employment.

### **10.12. ANSWER TO CHECK YOUR PROGRESS**

1. Refer Para 10.1
2. Refer Para 10.2.
3. Refer Para 10.4
4. Refer Para 10.5
5. Refer Para 10.7
6. Refer Para 10.8

### **10.13.MODEL QUESTIONS**

1.        Write an essay about the right of children in our Country.
2.        Critically assess the law, policy and practice of Child Labour in our country.

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HUMAN RIGHTS AND VICTIMOLOGY

Time : Three Hours

Maximum : 100 Marks

Answer any Five Questions

1. உலகளாவிய பார்வையில் பாதிக்கப்பட்டோரியலின் வரலாற்று வளர்ச்சியினை கண்டறிக .

Trace the Historical development of Victimology in the Global Perspectives.

2. ஹான்ஸ் வான் ஹென்டிங்கின் பாதிக்கப்பட்டோர்களுக்கான பொதுவான வகைப்பாட்டினை விளக்கமாக விவாதி.

Discuss in detail about Hans Von Hentig and its General Classification of Victims.

3. ஐக்கிய நாடுகளின் குற்றத்தினால் பாதிக்கப்பட்டவர்கள் மற்றும் அதிகார துஷ்பிரோயகத்தினால் பாதிக்கப்பட்டவர்களுக்கான பிரகடனம் 1985ன் சிறப்பியல்புகளை வரையறு.

Describe the Salient features of United Nations Declaration for Victims of Crimes and Abuse of Power, 1985.

4. குற்றத்தினால் பாதிக்கப்பட்டவர் என்பவர் யார்? இந்தியாவில் பெண்களுக்கெதிராக நடைபெறும் பாதிப்புகளைப் பற்றி விளக்குக.

What is a Crime Victim? Explain the various forms of Women Victimization in India.

5. விவரி.

அ) பாலியல் சுற்றுலாவில் பாதிக்கப்படுபவர்

ஆ) குழந்தைக் கடத்தல்

இ) இனப்படுகொலை

Explain it :

- a) Victims of Sex Tourism
- b) Child Trafficking and
- c) Genocide

6. சாதிகலவரத்தினால் பாதிக்கப்படுவோர் எதிர்கொள்ளும் பல்வேறு வகையான பாதிப்புகளை பற்றி விளக்குக.

Explain the Various forms of Victimizations faced by the victims of caste violence.

7. பாதிக்கப்பட்டோர்க்கு உதவும் தேசிய அமைப்பு மற்றும் சர்வதேச பொது மன்னிப்பு அமைப்பு இவைகள் எவ்வாறு குற்றத்தினால் பாதிக்கப்படுவோர்களை அணுகுகிறது மற்றும் அவற்றின் பணிகளை விளக்குக.

Explain the functions of National Organisations of Victim Assistance and the Amnesty International to deal the crime Victims.

8. விளக்குக

அ) பாதிக்கப்படுவோற்ற குற்றம்

ஆ) புகார் செய்யப்படாத குற்றம்

இ) சர்வதேச குற்றத்தினால் பாதிக்கப்பட்டோரின் அளவாய்வு.

Explain about

- a) Victimless Crime
- b) Unreported Crime and
- c) International Crime Victim Surveys.

9. குற்றவியல் நிதி அமைப்புகளால் இரண்டாம் நிலை பாதிக்கப்படுவோர்கள் பற்றி விவாதி. மேலும் குற்றத்தினால் பாதிக்கப்பட்டவர்களுக்கு உதவுவதில் காவல்துறையின் பங்கு யாது?

Discuss the Secondary Victimization of Criminal Justice System. Explain role of law enforcement of assist the Crime Victims.

10. குழந்தைகளின் உரிமைகளைப் பற்றி விளக்குக. சர்வதேச மற்றும் தேசிய அளவிலான குழந்தைகளுக்கான உரிமைகள் பற்றி திறனாய்வு செய்க.

Explain the Child Rights. Critically examine the National and International Perspectives of Child Rights.



